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CLAREMONT MCKENNA COLLEGE
THE POLITICS OF PHYSICAL EDUCATION REFORM

SUBMITTED TO
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AND
DEAN GREGORY HESS
BY
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FOR
SENIOR THESIS
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4/23/2012

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Contents

Acknowledgements	3
Introduction	6
1. Why Physical Education?.....	9
Investigations into the Costs and Effects of the Obesity Epidemic.....	9
The Benefits of Physical Activity	14
The Financial Costs of Physical Inactivity.....	17
Physical Activity Boosts Schoolchildren’s Academic Performance.....	20
Why Efforts for More Physical Education in Schools are Needed	22
2. The Development of Physical Education: From Private, to State, to Federal, and Back Again.....	25
The Beginnings of Physical Education	26
The American Alliance for Health, Physical Education, Recreation and Dance, and the National Association for Sports and Physical Education.....	29
The Start of Federal Involvement	30
President John F. Kennedy and a National Movement	32
Post-Kennedy.....	36
Physical Education’s Return to non-federal Entities.....	38
3. The Current Status of Physical Education: How the States have Dropped the Ball.....	41
The Effects of Federal Regulation on Physical Education.....	41
Physical Education as a “secondary” subject.....	44
States’ Ineffective Fight against the Natinoal Juvenile Obesity Problem	51
Federal Ignorance of Physical Education in Education Reform	55
The Obamas: Federal Involvement and the Let’s Move! Program	57

4. Is Federal Involvement in Physical Education Constitutional?	64
The Supreme Court's Jurisprudence on Education	65
Madison v. Hamilton: The Powers of the Federal Government.....	69
The Taxing and Spending Clause	73
5. Proposed Federal Physical Education Legislation and the Fitness Integrated with Teaching Kids Act (FIT Kids Act)	85
Recent Federal Attempts to Improve Health and Wellness	86
Federal Legislation.....	88
FIT Kids Act	100
Mandating Physical Education.....	104
6. The Politics of Physical Education Legislation – Why did the FIT Kids Act Fail to Pass?	109
Richard Simmons.....	111
Interest Groups.....	113
Following the Money	117
The House v. The Senate	120
Personal Responsibility and Local Control.....	123
Conclusion.....	126
Bibliography.....	133

Introduction

In July of 2010, the *Houston Chronicle* reported that “[m]ore than two-thirds of Texas schoolchildren flunked the state’s physical fitness test [that] year...”¹ California experienced similar disappointing results in December of 2011 when the *LA Times* reported that “[f]ewer than one-third of California students who took a statewide physical fitness test this year managed to pass all six areas assessed” with only 31% of the 1.34 million 5th, 7th, and 9th graders making the “physically fit” cut.² This news is especially alarming given the mounting evidence of increased levels of obesity among the population in the United States, specifically among younger generations. In fact, obesity rates have increased significantly in the general population over the last three and a half decades becoming a central issue that health experts and policymakers frequently discuss.

Today, whether or not someone is “obese” is most often determined by the body mass index (BMI) calculation, which was established in the mid-19th century. The measurement is calculated by dividing the mass of a person in kilograms by the square of the person’s height as measured in meters. The calculation is usually referred to a BMI scale which offers a range for each category of results to determine whether or not someone is overweight. The higher the number, the unhealthier someone is considered to be. A person with a BMI between 25 and 30 is considered overweight; a BMI from 30 to

¹ Ericka Mellon. "Most Students Fail in Fitness; Looser Gym Rules Raise Concern." *Houston Chronicle*. Hearst Communications Inc., 1 July 2010. Web. 22 Apr. 2012. <<http://www.chron.com/news/houston-texas/article/Most-students-fail-in-fitness-looser-gym-rules-1707766.php>>.

² Teresa Watanabe. "Just 31% of California Students Pass P.E. Test." *Los Angeles Times*. Tribune Company, 3 Dec. 2011. Web. 22 Apr. 2012. <<http://www.latimes.com/news/local/la-me-fitness-schools-20111203,0,2890549.story>>.

35 as Moderately Obese (Obese Class I); from 35 to 40 as Severely Obese (Obese Class II), and over 40 as Very Severely Obese (Obese Class III).

These measurements are supposed to eliminate the height variable to give an absolute determination if someone is over their pre-determined “targeted” healthy weight. The measurement is often criticized as a poor gauge to measure a person’s health and their comparable weight, however, it is the easiest and most non-intrusive form of measurement and thus, the most relied upon. While other measurements such as body fat percent composition, cholesterol levels, and blood pressure may be more accurate gauges of health, the BMI data is most readily available and provides a decent-enough guideline for experts and policy makers to reach conclusions on the overall health of populations. Conclusions based on BMI data are rarely questioned.

It is generally accepted that the rise in prevalence of obese individuals is attributed to both a deviation from the normal diet and a decrease in regular physical activity. In the ‘60s and ‘70s, fast food chains began to spread their stores throughout the nation while food production companies increased efficiency in churning out high-calorie, low-nutrition, low-cost food. Today, the typical weekly diet now includes higher consumption of meat, fat, carbohydrates, salts, and calories; all of which lead to an increase in weight, risk factors for numerous deadly and chronic illnesses, and ultimately, a less healthy population. The American diet is less nutritious and more consumptive than 40 years ago.³

³ Schlosser, Eric. "Fast Food Nation The Dark Side of the All-American Meal." The New York Times. NYTimes.com. The New York Times Company. Web. 23 Apr. 2012. <<http://www.nytimes.com/books/first/s/schlosser-fast.html>>.

With the advent and mass production of the television, computer (and later the internet), and numerous other technological devices designed to entertain us, Americans do not engage in physical activity in the scale as before. Weekly organized sport has taken precedent over the almost daily spontaneous neighborhood sports competitions and games. Although fitness centers have sprung up throughout the nation, most Americans do not attend them on a consistent basis and rarely achieve the recommended 60 minutes per day of moderate to vigorous physical activity as recommended by the Centers for Disease Control and Prevention (CDC).⁴ As a result, Americans today lead rather sedentary lives, which, compounded with the increased consumption and less nutritious diet, has fueled the waist-widening problem into proportions large enough to be recognized as an “epidemic” by the public and experts alike.

In school, this problem can, and should, be attacked head on. Americans learn math in math class; biology in biology class; Spanish in Spanish class; and in physical education (PE) class, they should learn to be physically healthy. If children in the United States failed their math tests in as large ratios as students failed the California and Texas physical fitness exams, the public would be up in arms. But the failure of physical education classes to deliver healthy Americans has more to do with the support structure, or lack thereof, from schools and states.

Today, physical education’s purpose in schools across the nation is, according to the homepage of one of the leading nonprofit organizations in physical education advocacy, the National Association for Sport and Physical Education (NASPE), to teach

⁴ "How Much Physical Activity Do Children Need?" *Centers for Disease Control and Prevention*. USA.gov, 09 Nov. 2011. Web. 22 Apr. 2012.
<<http://www.cdc.gov/physicalactivity/everyone/guidelines/children.html>>.

students the “skills necessary to perform a variety of physical activities[, to teach them] the implications of and the benefits from involvement in physical activities[, to create a habit of] participat[ing] regularly in physical activity[, to become] physically fit[, and to] value physical activity and its contribution to a healthful lifestyle.”⁵ Students should leave school with the ability to continue healthy habits such as eating nutritiously and staying physically active consistently. Unfortunately, there is little evidence to show that many physical education programs meet these standards due to the limited support they receive.

Numerous efforts today in reduction and prevention of obesity and its prevalence in the United States focus on improving what we eat, and to eliminate overconsumption of unhealthy foods. However, the amount of attention given to increasing physical activity has been almost negligible in comparison. I aim to tackle why physical education, which is the main educational class that could play a significant role in tackling the obesity epidemic, has been largely relegated to the sidelines by state governments and the federal government.

It is widely recognized that physical activity can lead to a decline in weight, but the lack of emphasis placed on the numerous other advantages that outweigh any reduction in weight, is startling. In chapter one, I examine the costs of obesity, and how physical activity can mitigate and reduce the negative health effects caused by inactivity and weight gain. However, the benefits also reach beyond health as physical activity has been shown to specifically benefit schoolchildren’s educational and learning

⁵ "Moving into the Future: National Standards for Physical Education, 2nd Edition." *American Alliance for Health, Physical Education, Recreation and Dance*. Web. 22 Apr. 2012. <<http://www.aahperd.org/naspe/standards/nationalStandards/standardsbackground.cfm>>.

performance. Physically active children learn more and score higher on assessments than their inactive cohort.

In chapter two, I discuss the history and development of physical education in the United States from an institutional and legislative level. Physical education began in the 1860s, for much of the same reasons as we currently hold physical education classes, with private institutions training teachers to instruct German-style gymnastics who would then go to individual schools and teach the students. Soon, physical education caught on with states as they built-up their public education systems. Soon, states created laws mandating physical activity. After World War II, the federal government became more involved with youth fitness, but only peripherally as physical education was mostly left to the states. In the last few decades, the federal government has taken a greater role in trying to improve to improve youth fitness without regulating physical education, but the attempts did not seem to shave off any of the pounds from this enlarging problem.

To make matters worse, as I discuss in chapter three, with tightening budgets and increased demands from the federal government in the “core” subjects of math, science, and language arts, states and schools have dropped the ball with physical education. Schools have canceled physical education programs and states have done little to ensure that these programs are funded and properly monitored to increase standards with the increase in children’s girths. Yet even when states tried to improve and maintain physical education, they were not willing to, or possibly could not, go far enough and provide the money necessary, or keep schools accountable to their own state laws, all of which would be necessary to implement positive change. As Mark Fainaru-Wada of ESPN.com reported, “at a time when every penny is being pinched by every school in every district

in every county in every state, physical education is taking a beating. The experts and educators say there is no doubt that the erosion of P.E. has been a major contributor to the skyrocketing obesity rates.”⁶ The states, which are most responsible for preventing this erosion of physical education, have flunked physical education. The question then is, can the federal government constitutionally step in to save the day and work with states to resurrect physical education while staying within their Constitutional powers?

In Chapter four, I discuss the Supreme Court’s jurisprudence regarding federal involvement in education and similar state matters. Despite the fact that education has never been considered a right guaranteed to citizens by the constitution, Congress can still enact laws under the Taxing and Spending Powers Clause (Article 1, Section 8, Clause 1) of the Constitution given certain conditions.

Because the federal government can support states in improving physical education, I examine the numerous federal proposals regarding physical education starting from the early 2000s. Early in the decade, these bills proposed tended to rely on grant proposals doled out by the Secretary of Education or Health and Human Services. However, later on, the proposals split into two types. The first is a more intrusive amendment to the Elementary and Secondary Education Act of 1965 (ESEA), which is the main piece of federal legislation that regulates any school that receives federal funding. The second type relies on disseminating information to schools and parents to inform them of the importance of physical education, and physical activity, as well as requiring schools to notify parents of the health and wellness programs carried out by the school.

⁶ Mark Fainaru-Wada. "Critical Mass Crisis: Child obesity." *ESPN.com*. 26 Mar. 2009. Web. 22 Apr. 2012. <<http://sports.espn.go.com/espn/otl/news/story?id=4015831>>.

One act that followed the latter formula is the FIT Kids Act. This bill, which has been introduced in the House of Representatives by Congressman Ron Kind of Wisconsin for the past three Congressional sessions, is popular among Democrats because it forces local communities to pay greater heed to health and wellness programs, such as the physical education programs of the schools. Many Republicans supported the bill because it was a non-intrusive way to prod states to support physical activity that did not include creating national standards and assessments. Additionally, non-profits, celebrities, and even interest groups from the private sector strongly advocated for the bill. The bill successfully passed the House in 2010 but failed to pass the Senate. It was reintroduced this session but has not been voted out of committee. In this chapter I will dissect the bill and predict whether or not it would have had much of an impact.

The FIT Kids Act was the only bill that remotely came close to enactment. Given that the bill was non-intrusive with minimal federal regulations, my final chapter attempts to answer why this bill did not pass. I look at who supported the bill, what they said and did to try and pass it, and also present reasons why it died in Committee. Some issues were more partisan in nature than others, but the Bill also suffered from a lack of direction from the top organizations in physical education-advocacy; the very organizations that helped shape state standards and physical education legislation had fractured the meaning of physical education over the many years leading to its downfall.

But what the FIT Kids Act has shown is that federal support for physical education may not come for a long time. Republicans have taken over the House and, in their attempts to cut the budget and size of the federal government, will not consider such a bill. Given the importance and need for our children to stay healthy, we can only

wonder when enough attention, a large enough outcry, and how big of a healthcare burden, will force legislators in state capitols, and Washington D.C., to accept that physical education should be treated with the same urgency and respect as the “core” subjects. If we want America to slim down and get healthy, we will have to accept that something must be done. Even if the first step, such as the FIT Kids Act is not perfect, support for physical education can get the train back on the tracks. Only when physical education is a priority among policymakers will we see significant improvements. Until then, America will continue to sit in front of their screens, eating their BigMacs, and growing as fat as ever.

1. Why Physical Education?

Investigations into the Costs and Effects of the Obesity Epidemic

On December 13, 2001, U.S. Surgeon General David Satcher published *A Call To Action To Prevent and Decrease Overweight and Obesity*, which declared that “[o]verweight and obesity...have reached epidemic proportions in the United States.”¹ Satcher used the same measurements of BMI as The Center for Disease Control and Prevention (CDC) and the National Institutes of Health (NIH) to determine, by BMI, what is considered overweight, a measurement between 25 to 29.9 kg/m², and obesity, a BMI ≥ 30 kg/m².² This measurement and the ranges are used by researchers and policymakers around the world. According to *Facts About Obesity in the United States*, a CDC info sheet, “[b]etween 1980 and 2000, obesity rates doubled among adults....Similarly, overweight rates have doubled among children and tripled among adolescents...”³ According to the Robert Wood Johnson Foundation (RWJF), the United States’ largest philanthropy devoted exclusively to health and health care, the trend in rising obese and overweight Americans did not take-off until the mid-1970s. Between 1960 and 1971, the overweight rate among children aged 6-19 years stayed relatively stable, hanging around 5% for much of the decade. However, into the middle of the

¹ United States. Department of Health and Human Services. Office of the Surgeon General of the United States. By David Satcher. *The Surgeon General’s Call to Action To Prevent and Decrease Overweight and Obesity 2001*. Rep. Web. 22 Apr. 2012.
<<http://www.surgeongeneral.gov/topics/obesity/calltoaction/CalltoAction.pdf>>. Pg. XIII

² United States. Department of Health and Human Services. National Institutes of Health. *Clinical Guidelines on the Identification, Evaluation, and Treatment of Overweight and Obesity in Adults*. By Xavier Pi-Sunyer. 4083 ed. Vol. 98. Web. 22 Apr. 2012.
<http://www.nhlbi.nih.gov/guidelines/obesity/ob_gdlns.pdf>. Pg. XI

³ United States. Department of Health and Human Services. Centers for Disease Control and Prevention. *Facts About Obesity in the United States*. Web. 22 Apr. 2012.
<http://www.cdc.gov/pdf/facts_about_obesity_in_the_united_states.pdf>. Pg. 1

1970s, the overweight rate among children aged 6-19 years significantly and steadily increased to roughly 15% by 2000.⁴ The National Health and Nutrition Examination Survey (NHANES) conducted by the CDC stated that in 2007 “approximately 17% of children aged 2-19 years are obese.”⁵ But children aged 6-11 and 12-19 had obesity rates of 19.6% and 18.1%, respectively, significantly higher than the youth and childhood average.⁶ In previous years, these numbers were greatly skewed by race and income with poorer non-whites significantly more obese, however, in the past few years, overweight and obesity levels disparities regarding income levels have decreased as this problem increases in size to infect the entire population, regardless of financial wealth.⁷

Although statistics regarding physical activity dating before the 1970s are difficult to find, the little evidence available indicates a general decrease in physical activity among the nation as a whole since the 1950s. Ross Brownson et al published a study in April 2005 entitled “Declining Rates of Physical Activity in the United States: What are the Contributors?” in the Annual Review of Public Health. They examined leisure-time activities, work-related activity, activity in the home, sedentary activity, and means of transportation to determine total levels of physical activity, concluding that from the

⁴ "America's Weight Gain 1960-2000." *The Robert Wood Johnson Foundation: Health and Health Care Improvement*. Web. 22 Apr. 2012.

<http://www.rwjf.org/files/newsroom/interactives/awgp/awgp_feature.jsp>.

⁵ "Overweight and Obesity - Data and Statistics." *Centers for Disease Control and Prevention*. Centers for Disease Control and Prevention, 16 Apr. 2012. Web. 22 Apr. 2012.

<<http://www.cdc.gov/obesity/childhood/data.html>>.

⁶ Cynthia Ogden. "Prevalence of Obesity Among Children and Adolescents: United States, Trends 1963-1965 Through 2007-2008." *Centers for Disease Control and Prevention*. Centers for Disease Control and Prevention, 04 June 2010. Web. 22 Apr. 2012.

<http://www.cdc.gov/nchs/data/hestat/obesity_child_07_08/obesity_child_07_08.htm>.

⁷ Jeffrey Levi. *F as in Fat: How Obesity Threatens America's Future 2011*. Rep. Robert Wood Johnson Foundation, July 2011. Web. 22 Apr. 2012.
<<http://healthyamericans.org/assets/files/TFAH2011FasInFat10.pdf>>. Pg. 24 and "Relationship Between Poverty and Overweight or Obesity" « Food Research & Action Center." *Food Research and Action Center*. Web. 22 Apr. 2012. <<http://frac.org/initiatives/hunger-and-obesity/are-low-income-people-at-greater-risk-for-overweight-or-obesity/>>.

1950s to 2000, the United States saw a decreasing trend in physical activity.⁸ This matches reports that since the 1990s, physical activity decreased, especially among young adults and children. The study blamed the numerous technological and industrial inventions, such as the advent of television (TV) and cars, for this decrease. In the case of TVs, the report found that between 1950 and 2000, the percentage U.S. households that owned TVs sharply increased from 10% to 98%. Additionally, in 1950, the daily television viewing of U.S. residents averaged less than 5 hours but by 2000 had climbed to roughly 7.5 hours. With computer and “smartphones” increasing the total “screen” time, as it is now called, the amount of time left over for leisure time physical activity has rapidly diminished. Computers, cars, phones, and numerous other technological advancements that have made our lives easier, have, in the process, changed the American lifestyle from relatively active and healthy to increasingly sedentary.

The reduced physical activity due to these new lifestyle inventions has been especially noticeable among the youth. The CDC Youth Risk Behavior Surveillance of the United States survey found that in 2007, only 17% of high school students participated in at least 60 minutes of physical activity each day. Even during organized sports play, a popular way for kids to engage in physical activity, a study by Desiree Leek of San Diego State University and the University of California-San Diego, uncovered that only “24% of participants met the 60-minute [government recommendation for] physical activity” during their sports practices.⁹ A 2010 CDC study published in June of 2011

⁸ Brownson, Ross C., Tegan K. Boehmer, and Douglas A. Luke. "Declining Rates of Physical Activity in the United States: What Are the Contributors?" *Annual Review of Public Health* 26.1 (2005): 421-43. Print.

⁹ Leek, Desiree. "Physical Activity During Youth Sports Practices." *Archives of Pediatrics & Adolescent Medicine* 165.4 (2011): 294-99. American Medical Association, Apr. 2011. Web. 22 Apr. 2012. <<http://archpedi.ama-assn.org/cgi/reprint/165/4/294>>.

demonstrated that Americans increased their sedentary lifestyles as the data “indicated that among students nationwide in grades 9-12, 15.3% met the aerobic objective, 51.0% met the muscle-strengthening objective, and 12.2% met the objective for both aerobic and muscle-strengthening activities.”¹⁰ As aerobic exercise best combats obesity and chronic illness, as well as improves health, this report exemplifies how widespread and pervasive the lifestyle is among American youth.

Yet, despite the clear three and a half long decade trend of decreasing physical activity and increasing obesity and overweight rates, national attention to the overweight, obesity, and physical activity problem in America was slow to catch-on. In 1998 the National Heart, Lung, and Blood Institute in cooperation with the National Institutes of Diabetes and Digestive and Kidney Diseases of the National Institutes of Health (NIH) released the *Clinical Guidelines on the Identification, Evaluation, and Treatment of Obesity in Adults: Evidence Report* which reviewed the risks and evidence-based treatment of overweight and obesity. Two years later, “*Healthy People 2010* identified overweight and obesity as major public health problems and set national objectives to reduce their prevalence.”¹¹ Later that year, in May, the U.S. Department of Health and Human Services (DHHS) and the U.S. Department of Agriculture (USDA) sponsored the National Nutrition Summit to highlight challenges and opportunities for national improvement in nutrition and lifestyle issues related to the epidemic of overweight and obesity.¹² Soon after, the Surgeon General held a Listening Session to gather public input

¹⁰ "Physical Activity Levels of High School Students --- United States, 2010." *Centers for Disease Control and Prevention*. Centers for Disease Control and Prevention, 17 June 2011. Web. 22 Apr. 2012. <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6023a1.htm?s_cid=mm6023a1_w>.

¹¹ David Satcher. Pg. XIV

¹² "National Nutrition Summit Background." *National Nutrition Summit*. Web. 22 Apr. 2012. <<http://www.nns.nih.gov/2000/background/background.htm>>.

to the problem. With the release of the Surgeon General's *Call To Action*, the obesity and overweight epidemic reached the forefront of the national attention.

Recent attention to the obesity epidemic shows that its effect on health is alarming: the drastic increase in overweight and obesity rates can be fatal. Obesity and overweight are considered as “contributing factors to over 20 chronic diseases, including some cancers, arthritis, and even Alzheimer’s disease and dementia.”¹³ Maternal obesity adds major complications during and after pregnancy increasing the risk of pre-term birth and infant mortality.¹⁴ According to NIH’s 1998 Obesity report, “there is strong evidence that weight loss in overweight and obese individuals reduces risk factors for diabetes and cardiovascular disease (CVD).”¹⁵ Strong evidence also indicates that, above a BMI of 25 kg/m², morbidity rates increase from “hypertension, type 2 diabetes, coronary heart disease (CHD), stroke, gallbladder disease, osteoarthritis, sleep apnea and respiratory problems, and some types of cancer (endometrial, breast, prostate, and colon).”¹⁶ Increases in BMI tend to result in modest increases in mortality. But studies show that at a BMI of “30 kg/m² or above, mortality rates from all causes, and especially from cardiovascular disease, are generally increased by 50 to 100 percent above that of persons with BMIs in the range of 20 to 25 kg/m².”¹⁷

¹³ Jeffrey Levi. *F as in Fat: How Obesity Policies Are Failing in America* 2008. Rep. Robert Wood Johnson Foundation, Aug. 2008. Web. 22 Apr. 2012.
<<http://www.rwjf.org/files/research/081908.3424.fasinfat.pdf>>. Pg. 5

¹⁴ *Ibid.* Pg. 5

¹⁵ United States. Department of Health and Human Services. National Institutes of Health. *Clinical Guidelines on the Identification, Evaluation, and Treatment of Overweight and Obesity in Adults*. By Xavier Pi-Sunyer. 4083 ed. Vol. 98. Web. 22 Apr. 2012.
<http://www.nhlbi.nih.gov/guidelines/obesity/ob_gdlns.pdf>. Pg. 12

¹⁶ *Ibid.* Pg. 12

¹⁷ *Ibid.* Pg. 22

According to the 2008 report, “F as in Fat,” heart disease and hypertension, once in decline due to advancement in new medical treatments and drugs, are back on the rise: “One in 4 Americans has some form of heart disease, and one in 3 Americans has high blood pressure.”¹⁸ Type 2 Diabetes, formerly seen primarily in adults now is prevalent among children and adolescents leading some researchers, scientists, and experts, to predict that “this generation of children could be the first to have shorter, less healthy lives than their parents.”¹⁹

In 2010, the U.S. Department of Health and Human Services released “The Surgeon general’s Vision for a Healthy and Fit Nation 2010” in which Surgeon General Regina Benjamin reported, “each year, obesity contributes to an estimated 112,000 preventable deaths.”²⁰ These harrowing statistics, facts, and conclusions, and their reflections have become apparent to everyday people.

The Benefits of Physical Activity

Still, the solutions to obesity have been known, and preached, for decades: increase physical activity, eat nutritious, appropriately-sized meals, and avoid sedentary practices and innutritious foods. While scientists continue to find new information in attempts to nail down the exact meaning, distinction, and definition of the “healthy” foods, the conventional and scientific knowledge is that cutting back total consumption, eating more fruits and vegetables, balancing the different types of foods, and avoiding

¹⁸ F as in Fat: How Obesity Policies are Failing in America 2008. Pg. 5

¹⁹ *Ibid.* Pg. 5

²⁰

U.S. Department of Health and Human Services. *The Surgeon General’s Vision for a Healthy and Fit Nation*. Rockville, MD: U.S. Department of Health and Human Services, Office of the Surgeon General, January 2010. <http://www.surgeongeneral.gov/library/obesityvision/obesityvision2010.pdf>. Pg. 2. Accessed 12/31/11

sweets, excess salt, and cholesterol can lead to dramatic weight loss and overall improvements in health.

Yet, even if nutritional guidelines were not met, physical activity, especially aerobic activity significantly reduces risk factors for chronic illnesses and negates much of the health risks brought on by excessive weight. In one of the earliest Surgeon General reports on obesity, Surgeon General Audrey Manley concluded that “Physical activity reduces the risk of premature mortality in general and of coronary heart disease, hypertension, colon cancer, and diabetes mellitus in particular. Physical activity also improves mental health and is important for the health of muscles, bones and joints.”²¹ Although studies have found it difficult to determine exactly, estimates of numerous studies throughout the first half of the past decade estimated the yearly toll of physical inactivity between 200,000 and 300,000 deaths in the United States.²² In 2009, the CDC estimated that 2.4 million people died in the previous year.²³ This would mean that physical inactivity was a leading factor in roughly 10% of deaths in the United States.

Most of these deaths were due to chronic illness, but prevention of chronic illnesses such as coronary heart disease, could be achieved through physical activity. Manson et al, in their study, “A Prospective Study of Walking as Compared with

²¹ US Department of Health and Human Services. *Physical activity and health: a report of the Surgeon General*. Atlanta, Georgia: US Department of Health and Human Services, Public Health Service, CDC, National Center for Chronic Disease Prevention and Health Promotion, 1996.

²² Robert Hahn, Steven Teutsch, Richard Rothenberg, and James Marks. "Excess Deaths From Nine Chronic Diseases in the United States, 1986." *Journal of the American Medical Association* 264.20 (1990): 2654-659. Print. And J. Michael McGinnis. "The Public Health Burden of a Sedentary Lifestyle." *Medicine & Science in Sports & Exercise* 24.6 (1992): S196-200. Print. and Ali Mokdad. "Actual Causes of Death in the United States, 2000--Correction." *JAMA: The Journal of the American Medical Association* 293.3 (2005): 298. Print.

²³ United States. U.S. Department of Health and Human Services. Centers for Disease Control and Prevention. *Deaths: Preliminary Data for 2009*. By Kenneth Kochanek, Jiaquan Xu, Sherry Murphy, Arialdi Minino, and Hsiang-Ching Kung. 4th ed. Vol. 59. Web. 22 Apr. 2012. <http://www.cdc.gov/nchs/data/nvsr/nvsr59/nvsr59_04.pdf>.

Vigorous Exercise in the Prevention of Coronary Heart Disease in Women” found in 1999 that “there was a strong, graded inverse association between physical activity and the risk of coronary events.”²⁴ The women who participated in the greatest amount of physical activity – greater than or equal to 3 hours per week of brisk walking or 1.5 hours per week of vigorous exercise – saw their risk for coronary heart disease reduced by almost 90%.²⁵ In 2009, the National Vital Statistics reported that “Diseases of the Heart” was the number one cause of death racking up just under an estimated 599,000 mortalities.²⁶

Of course, many argue that diet plays a large role in reducing mortality. However, more studies are showing that even when weight is not taken into account, physical activity significantly reduces risk factors in chronic illness. Today, prescribing, typically, daily moderate to vigorous physical activity for prolonged periods of time in order to increase health, the immune system, muscular and skeletal strength, etc., is known as “exercise therapy.” B.K. Pedersen of The Centre of Inflammation and Metabolism, Department of Infectious Diseases, and B. Saltin of The Copenhagen Muscle Research Centre, Rigshospitalet, Faculty of Health Sciences, University of Copenhagen, using a meta-analysis, examined the effect of exercise therapy on symptoms and pathogenesis of chronic illnesses. They argued that “The evidence suggests that in selected cases exercise therapy is just as effective as medical treatment – and in special situations more effective

²⁴ J.E. Manson, F. B. Hu, J. W. Rich-Edwards, G. A. Colditz, M. J. Stampfer, W. C. Willett, F. E. Speizer, and C. H. Hennekens. "A Prospective Study of Walking as Compared with Vigorous Exercise in the Prevention of Coronary Heart Disease in Women." *New England Journal of Medicine* 341.9 (1999): 650. Print. Pg. 650

²⁵ *Ibid.* Pg. 650

²⁶ *Deaths: Preliminary Data for 2009.*

– or adds to the effect” and sought to demonstrate this.²⁷ The pair found that “exercise-based cardiac rehabilitation reduced all-cause mortality by 20%” and “cardiac mortality by 26%.”²⁸ Additional evidence was found to reduce the dangers of diabetes. The pair recommended that a combination of strength, coordination, and endurance condition stabilized “the osteoarthritis-affected joint... Endurance training enhances the patients general physical functioning and can induce weight loss, thus enabling the patient to manage better.”²⁹ Today, the scientific community recognizes that physical activity reduces mortality rates and risk factors of chronic illnesses.

The Financial Costs of Physical Inactivity

But, America’s failure to maintain a healthy lifestyle of physical activity and eating nutritious meals not only swelled our waist but also thinned our wallet. The CDC found that in 1995, the direct health costs attributable to obesity were estimated to be around \$52 billion per year, and increased to an estimate \$75 billion per year by 2003.³⁰ In 2008, the CDC reported that overall medical care costs attributable to obesity had risen to an estimated high of \$147 billion.³¹ As a result, medical costs for overweight and obese people are greater. The CDC reported that in 2011, “people who were obese had medical costs that were \$1,429 higher than the cost for people of normal body weight.”³²

²⁷ B.K. Pedersen, and B. Saltin. "Evidence for Prescribing Exercise as Therapy in Chronic Disease." *Scandinavian Journal of Medicine and Science in Sports* 16.S1 (2006): 3-63. Web. 22 Apr. 2012. <<http://nutrilearning.com.ar/docs/articulos/interes/actfis/1.pdf>>. Pg. 1

²⁸ *Ibid.* Pg. 18

²⁹ *Ibid.* Pg. 26

³⁰ Facts about obesity in the United States

³¹ "Halting the Epidemic by Making Health Easier At A Glance 2011." *Centers for Disease Control and Prevention*. Centers for Disease Control and Prevention, 26 May 2011. Web. 22 Apr. 2012. <<http://www.cdc.gov/chronicdisease/resources/publications/aag/obesity.htm>>.

³² *Ibid*

Additionally, a 2010 study, “The costs of Obesity in the workplace,” by Eric Finkelstein published in the *Journal of Occupational and Environmental Medicine*, showed that obesity costs from absenteeism, costs due to missing work, and presenteeism, defined by the Center for Law and Social Policy (CLASP) “as lost productivity that occurs when employees come to work but perform below par due to any kind of illness,” quite significantly hurt productivity, and thus employers.³³ Finkelstein found that “in aggregate, the cost of obesity among U.S. full-time employees is estimated to be \$73.1 billion. This cost is roughly equivalent to the cost of hiring an additional 1.8 million workers per year at \$42,000 each, which is roughly the average annual wages of U.S. workers.”³⁴ The obesity epidemic is making our waists thicker and our wallets thinner hurting employers and employees alike.

Had Americans increased physical activity, many of the costs associated with obesity could have been saved. Studies show that physical activity increases productivity and decreases the costs of absenteeism: employees attend work more frequently which increases potential efficiency. In the 1980s, researchers and economists understood the possible link between physical fitness and reducing absenteeism, increasing happiness and efficiency, for a more productive workforce. In 1986, Aghop Der-Karabetian of the University of La Verne and Norma Gebharbp of General Dynamics co-authored *Effect of Physical Fitness Program in the Workplace* which looked at how businesses incorporated physical fitness programs to boost productivity. Previous researchers found that large

³³ Jodie Levin-Epstein. *Presenteeism and Paid Sick Days*. Rep. Center for Law and Social Policy, 28 Feb. 2005. Web. 22 Apr. 2012. <<http://www.clasp.org/admin/site/publications/files/0212.pdf>>.

³⁴ Eric A. Finkelstein, Marco DaCosta DiBonaventura, Somali M. Burgess, and Brent C. Hale. "The Costs of Obesity in the Workplace." *Journal of Occupational and Environmental Medicine* 52.10 (2010): 971-76. Print. Pg. 973-974

companies invest large sums of money for large fitness centers and programs such as Kimberly-Clark Corporation – \$2.5 million and a 32,000 square foot facility with 15 full-time health-care personnel – , American Can Corporation – \$60,000 annually for their corporate headquarter fitness program – , Xerox Corporation – aerobic exercise on state of the art equipment for employees – , Texas instruments – 250,000 square foot fitness center – , Bonnie Bell – fitness centers for all three facilities – , Exxon, Pepsico, and the Prudential Insurance Company, among those listed. Der-Karabetian and Gebharbp report that “preliminary estimates suggest that health-care costs have been reduced as a result of health promotion programs. Kennecott Copper reported a savings of \$448,400...A savings of \$2.7 million was reported at New York Telephone as a result of their fitness program...”³⁵ According to Der-Karabetian and Gebharbp, Metropolitan Life found that employees who engaged in their fitness program averaged 4.8 sick days a year compared to the 6.2 days absent of a control group that did not take part in the fitness program.³⁶ Additional and more recent studies back up Der-Karabetian and Gebharbp conclusion that “physically fit individuals benefit not only themselves, but also their employers” because a fit employee will “bring their ‘total person’ and their ability to function.”³⁷

But, physical activity does not just decrease the effects, frequency, and costs of absenteeism which are related to obesity (and predominantly physical inactivity); it also increases productivity by increasing the mental capacity in which people can work. A

³⁵ Aghop Der-Karabetian and Norma Gebharbp. "Effect of Physical Fitness Program in the Workplace." *Journal of Business and Psychology* 1.1 (1986): 51-58. Print. Pg. 53

³⁶ *Ibid.* Pg. 53

³⁷ *Ibid.* Pg. 56 and Matthew Wattles, and Chad Harris. "The Relationship Between Fitness Levels and Employee's Perceived Productivity, Job Satisfaction, and Absenteeism." *Journal of Exercise Physiology Online* 6.1 (2003): 24-32. Web. 22 Apr. 2012. <<http://faculty.css.edu/tboone2/asep/Wattles2.pdf>>. and Adrian Davis, and Marcus Jones. *Physical Activity, Absenteeism and Productivity: An Evidence Review*. Rep. Print.

December 2008 study assessing walking interventions on quality of life and job performance of Catalan University employees found that the group with the greatest increase in steps, compared to the beginning of the survey, taken throughout the day showed the greatest improvement in quality of life and work performance scores.³⁸ A 2004 study, *The Association between work performance and physical activity, cardiorespiratory fitness, and obesity*, by Pronk et al, found similar results. Pronk et al examined the association between physical activity, cardiorespiratory fitness, and obesity and work performance in 683 workers. “Results indicated that higher levels of physical activity related to reduced decrements in quality of work performed and overall job performance; higher cardiorespiratory fitness related to reduced decrements in quantity of work performed, and a reduction in extra effort to perform the work; obesity related to more difficulty in getting along with coworkers.”³⁹ While scientists are still trying to understand the chemical and biological reasons why exercise boosts worker productivity, the scientific data supports this claim.

Physical Activity Boosts Schoolchildren’s Academic Performance

The evidence is rather clear, not just for adults and workers, but also among children, increased physical activity, which for children can come from physical education, boosts academic performance. The Robert Wood Johnson Foundation published, in their report entitled *Active Education: Physical Education, Physical Activity*

³⁸ A. Puig-Ribera, J. McKenna, N. Gilson, and W. J. Brown. "Change in Work Day Step Counts, Wellbeing and Job Performance in Catalan University Employees: A Randomised Controlled Trial." *Promotion & Education* 15.4 (2008): 11-16. Print.

³⁹ Nicolaas P. Pronk, Brian Martinson, Ronald C. Kessler, Arne L. Beck, Gregory E. Simon, and Philip Wang. "The Association Between Work Performance and Physical Activity, Cardiorespiratory Fitness, and Obesity." *Journal of Occupational and Environmental Medicine* 46.1 (2004): 19-25. Print. Abstract

and Academic Performance, that “students whose time in PE or school-based physical activity was increased maintained or improved their grades and scores on standardized achievement tests, even though they received less classroom instructional time than students in control groups.”⁴⁰ Of 14 published studies analyzing data of 58,000 students between 1967 and 2006, “eleven...found that regular participation in physical activity is associated with improved academic performance.”⁴¹ RWJF declared that surveys in the US, the UK, Hong Kong, and Australia “observed statistically significant positive correlations between physical activity participation and academic performance.” Again, RWJF summarized the results of a national study in 2006 among 11,957 adolescents: “Adolescents who reported either participating in school activities, such as PE and team sports, or playing sports with their parents, were 20 percent more likely than their sedentary peers to earn an “A” in math or English.”⁴² And lastly, the RWJF pronounced that “research...found higher levels of physical fitness to be linked with improved academic performance among children and teens....Two large national studies in Australia and Korea, along with two smaller studies conducted in the U.S., found physical fitness scores to be significantly and positively related to academic performance.”⁴³

A recent study in the Northeastern United States confirmed the RWJF’s analysis. Controlling for gender, ethnicity, socioeconomic status (as determined by lunch status), and weight status, researchers set out to “evaluate the strength of the association between

⁴⁰ *Active Education: Physical Education, Physical Activity and Academic Performance*. Issue brief. *Active Living Research*. Robert Wood Johnson Foundation, 2007. Web. 22 Apr. 2012. <http://www.activelivingresearch.org/files/Active_Ed.pdf>.

⁴¹ *Ibid*

⁴² *Ibid*

⁴³ *Ibid*

fitness achievement and the odds of a passing score on the Math and English MCAS [(Massachusetts Comprehensive Assessment System)].”⁴⁴ The researchers found that physical fitness and Physical Education have a beneficial effect on academic performance and achievement among children.

Why Efforts for More Physical Education in Schools are Needed

Despite the large studies, conferences and reports on physical activity and obesity, most of the efforts focused on reversing the Obesity Epidemic centered on nutrition and diet. In schools, the greatest amount of attention is given to the contents of school lunches, which, if the funding is provided by the National School Lunch Program, must meet certain nutrition requirements.⁴⁵ Earlier in 2011, a debate on the Congressional floor broke out regarding the classification of the tomato paste used in pizzas served at school lunches. Some argued that the “eighth of a cup of tomato paste [should be] considered the nutritional equivalent of a half-cup serving of vegetables, since that’s how much tomato it takes to make it.”⁴⁶ However, other pastes did not receive such “preferential treatment” and many congressman and USDA officials argued that the paste should only receive credit for the actual volume served, like other pastes.

Yet, the solutions to the epidemic reach beyond the individual. As Surgeon General Benjamin stated, the causes, and wherein the solutions, of the epidemic lie, are

⁴⁴ Virginia R. Chomitz, Meghan M. Slining, Robert J. McGowan, Suzanne E. Mitchell, Glen F. Dawson, and Karen A. Hacker. "Is There a Relationship Between Physical Fitness and Academic Achievement? Positive Results From Public School Children in the Northeastern United States." *Journal of School Health* 79.1 (2009): 30-37. Print. Pg. 32

⁴⁵ Jonathan Kauffman. "Congress Rules That Pizza Sauce Is a Vegetable." *San Francisco Weekly*. 16 Nov. 2011. Web. 22 Apr. 2012. <http://blogs.sfweekly.com/foodie/2011/11/congress_rules_that_pizza_sauc.php>.

⁴⁶ Jill Adams. "'Pizza Vegetable' Controversy Is Hot Potato." *Los Angeles Times*. Los Angeles Times, 28 Nov. 2011. Web. 22 Apr. 2012. <<http://articles.latimes.com/2011/nov/28/health/la-he-school-lunch-nutrition-20111128>>.

“consuming too many calories and not getting enough physical activity, genes, metabolism, behavior, environment, and culture...also play a role in causing people to be overweight and obese.”⁴⁷ The factors that cause obesity are embedded within society. The safety, availability, and proximity of safe walkways can severely affect the frequency and duration people choose walking as a mode of transportation or exercise. Food choices, quality, and price in the neighborhood 7-eleven, supermarket, or gas station stand dramatically change what we purchase and decide to consume. Advertisements bombard us throughout our numerous hours of screen-time, displaying fake, but aesthetically appetizing renditions of the new, and extremely unhealthy, fast-food offerings, with extremely high success rates among the general population. Dr. Loel Solomon, vice president for Community Health at Kaiser Permanente, speaking on KPBS’ “These Days” in May of 2010, said that “we need a multi-pronged strategy because the factors that have led to this epidemic are so many....What has driven that has been a number of things....[It is the] environment around them, their physical activity environment and their food environment [which] has really conspired to create this problem.”⁴⁸ But, there are already attempts at the national level to positively change the food environment in schools. What remains to be seen are the same attempts to change the physical activity environment within schools.

⁴⁷ United States. Department of Health and Human Services. Office of the Surgeon General. *The Surgeon General’s Vision for a Healthy and Fit Nation*. By Regina Benjamin. Centers for Disease Control and Prevention. Web. 22 Apr. 2012.

<<http://www.surgeongeneral.gov/library/obesityvision/obesityvision2010.pdf>>. Pg. 4

⁴⁸ "System-wide Approach Needed To Combat Obesity Epidemic." *These Days*. KPBS, San Diego, CA, 27 May 2010. *KPBS.org*. San Diego State University, 27 May 2010. Web. 22 Apr. 2012. <<http://www.kpbs.org/news/2010/may/27/system-wide-approach-needed-combat-obesity-epidemi/>>. Transcript.

Physical activity is academically beneficial for students. If they continue to remain physically active, these students are more likely to be successful in their work. Due to federal regulations and state and district volition, many schools are eliminating their physical education programs. According to Virginia Chomitz et al in their study, *Is There a Relationship Between Physical Fitness and Academic Achievement? Positive results From Public School Children in the Northeastern United States*, the federal law, “‘No Child Left Behind Act of 2001’ has required some school administrators to shift resources away from PE toward time on academics. Some 14% of school districts report decreasing PE time to accommodate more Math and English. In 1991, 41.6% of high school students participated in daily PE compared with 28.4% in 2003.”⁴⁹ This decrease in physical education is most likely linked to, and probably heavily influences, the previously mentioned decrease in physical activity among students. The consistent decrease will result in a less healthy nation, which costs the country more in healthcare, is less productive, and children who learn less and at a slower pace. Physical education must be emphasized for the future benefit of the nation.

⁴⁹ “Is There a Relationship Between Physical Fitness and Academic Achievement? Positive results From Public School Children in the Northeastern United States.” Pg. 31

2. The Development of Physical Education: From Private, to State, to Federal, and Back Again

Although physical education had been taught in the U.S. throughout the years dating to the 18th century, the spark that transformed physical education across the nation began with the public education movement, which took hold of the country around the time of the Civil War. It started from an institute aimed at teaching instructors how to lead physical education classes. However, the states, swept up in ensuring quality access to public schools, soon became involved in the physical education movement by passing laws requiring physical education classes in all public schools.

After World War II and at the start of the Cold War, President Dwight Eisenhower made physical fitness, and thus physical education, a national and federal priority. He founded the President's Council on Youth Fitness in an attempt to improve the physical fitness levels of the nation. President Kennedy, before stepping foot in office, went to great lengths to promote the importance of physical activity, fitness, and education. At no other time in the nation's history was physical education and physical fitness viewed in as high regard. But after his assassination, physical education never again saw such great prominence in the national discussion of education.

Presidents Lyndon Johnson, George H.W. Bush, and Bill Clinton all worked to strengthen education but did not include physical education among the fields of importance. As a result, physical education was returned to the purview of the states. The states, trying to keep up with federal regulations on math, science, and reading, did not

work to improve physical education. Throughout the history of physical education in the United States, government involvement has come with both great success and languid failure. The cause for physical education saw its greatest success when the federal government took a leading role in promoting physical education programs; it has suffered the most when this responsibility is left to the states.

The Beginnings of Physical Education

Physical Education was introduced into the United States education systems for two main purposes: to improve upon the nation's physical welfare and to harness to the mutually beneficial relationship between physical and mental well-being. As far, back as 1861, experts recognized what scientific studies have since reaffirmed through numerous studies, as the benefits of physical education. Private and public colleges started training programs for physical education teachers. The teachers then went off into the nation teaching wherever they could find work, since physical education was not a regular part of the school curriculum.

In the 1860s, public education first entered into the United States and, according to Dr. Robert Guisepi, historical expert, head of *International World History Project*, and editor of "The History of Education," wrote that "by the end of the [nineteenth] century [public]...secondary schools had begun to outnumber the private academies."¹

Many historians credit Dr. Dio Lewis as the pioneer who initiated the boom in physical education in the United States. According to the book *A History of Physical Education*,

¹ Robert Guisepi. "The History of Education." *World History International: World History Essays From Prehistory To The Present*. History World International. Web. 22 Apr. 2012. <http://history-world.org/history_of_education.htm>.

In 1856 he made a short visit to Paris, chiefly to secure material suitable for demonstration in his popular lectures on physiology... Referring to this period he speaks of himself as ‘burdened with what I felt to be my life-work, that of urging upon the people their right to ‘a sound mind in a sound body/ and the introduction of a new system of physical training into the schools of the country. . . ;’ and how his thoughts were turned to gymnastics is told in these words: ‘During the eight years of lecturing, the spare hours were devoted to the invention of a new system of gymnastics. The old, or German gymnastics, the one so common throughout our country, was obviously not adapted to the classes most needing artificial training. Athletic young men, who alone succeeded in the feats of that gymnasium, were already provided for. Boat clubs, ball clubs, and other sports furnished them in considerable part with the means of muscular training. But old men, fat men, feeble men, young boys, and females of all ages — the classes most needing physical training,—were not drawn to the old-fashioned gymnasium. The few attempts that had been made to introduce these classes to that institution had uniformly and signally failed. The system itself was wrong.’”²

In an attempt to institute a new system of physical training, on July 4, 1861, Dio founded Dr. Lewis’ “normal school of physical education.”³ The Institute for Physical Education comprised of four medical professionals from Harvard’s Medical school became the first institute to “graduate a class of teachers.”⁴

Dr. Lewis and the promotion of physical education were helped by the rise of public education beginning in the 1860s which sparked a need for such a field and professional organizations that accompanied it. Although Dr. Lewis was not the first to lecture on, or teach, physical education, no previous structured form of training Physical Education teachers had led to the massive growth and legislation. With the rise of public schools in the first decade of the 1900s, Dr. James Rogers, who was the head of the National Physical Education Service, an organization founded at the turn of the century to spread physical education throughout the country, led the charge for mandatory Physical

² Earle F. Zeigler. *A History of Physical Education & Sport in the United States and Canada: (selected Topics)*. Champaign, IL: Stripes Pub., 1975. Print. Pg. 255

³ *Ibid.* Pg. 255

⁴ *Ibid.* Pg. 255

Education in public schools throughout every state across the nation. Starting in November of 1918, The National Physical Education Service wrote sample laws, publicized material, and organized the lobbying necessary to pass the state laws. Dr. Rogers and the National Physical Education Service were extremely successful as within the next half-century, most states required physical education in public schools by passing laws with “specific requirements in time allotment, type of program, [and] graduation requirements...”⁵

Due to the increase in state legislation, the demand for physical education teachers exploded leading to an increase in physical education teacher programs and institutions. State laws and the state department “left sufficient latitude so that there were... great variations in courses for a degree. Courses became so varied as, in some cases, to have almost meaningless descriptions.”⁶ In 1930, The California State Department of Education studied 28 college catalogues and found 671 different course titles for teacher preparation in physical education.

The National Education Association stepped in to organize the field. Six national organizations, the American Physical Education Association, Society of State Directors of Health and Physical Education, City Administrators of Health and Physical Education, Women Directors of Physical Education in Colleges and Universities, College Physical Education Association, and the Department of School health and Physical Education of the National Education Association worked with a National Committee authorized by the National Education Association to draw up standards for evaluating teacher-education

⁵ Arthur Weston. *The Making of American Physical Education*. New York: Appleton-Century-Crofts, 1962. Print.. Pg. 74

⁶ *Ibid.* Pg. 76

curriculums in physical education. Working from 1931 to 1937, the National Committee employed a subcommittee in each state to employ its changes outlined in, what was known as the National Study of Professional Education in Health and Physical Education. In 1935, the Committee “presented a code of standards that became a professional yardstick for physical education. Standards were included for the preparation of secondary school teachers, selection of students for teacher education, and for courses, staff, and facilities in physical education.”⁷

The American Alliance for Health, Physical Education, Recreation and Dance, and the National Association for Sports and Physical Education

In 1885, a group interested in furthering physical education in the United States met and founded what eventually became the American Alliance for Health, Physical Education, Recreation and Dance (AAHPERD). In 1903, the group then changed its name to the American Physical Education Association. This organization successfully lobbied in the first few decades for the first handful of states to pass physical education laws. However, on June 28, 1937, its merger with the National Education Association (NEA) thrust both bodies into the forefront of Physical Education. Since then, AAHPERD and the NEA have been, and continue to be, the leaders in promoting and championing increased physical education in schools.

In 1960, AAHPERD, then known as the American Association for Health, Physical Education, and Recreation (AAHPER), accepted the National Council for Accreditation of Teacher Education (NCATE) as the official accrediting organization for teacher education in health, physical education, and recreation. Today, the National

⁷ *Ibid.* Pg. 76

Association for Sports and Physical Education (NASPE), one of the five national associations that comprise AAHPERD, and NCATE work together to accredit physical education institutions and programs.

AAHPERD's 1960 acceptance of NCATE as the accrediting organization for physical education was considered a stabilizing force in the field. In the 1950s, the federal government stepped in to promote and raise the awareness for the importance of physical education. AAHPERD's collaboration with the NEA, and the federal government's involvement brought a direction to physical education that the field had never seen before.

The Start of Federal Involvement

In December of 1953, Dr. Hans Kraus and Ruth Hirschland published an influential article entitled "Muscular Fitness and Health," now known as the Kraus-Weber Tests, in the *Journal of Health, Physical Education, and Recreation*. The article prompted national attention among policymakers and health experts alike, leading to the first major federal-level talks regarding physical education. Kraus and Hirschland set out to compare the fitness levels of American children compared to European children. Kraus believed, according to the "History of the President's Council on Physical Fitness and Sports (1956-2006)," that "the affluent lifestyle of 20th century America was making life so easy and effortless that American adults and children were rapidly losing muscle tone."⁸ Kraus tested roughly 4,400 American students aged between 6 and 16 in public school systems across the United States and about 3,000 European students, in the same

⁸ "The President's Council on Physical Fitness and Sports - 50th Anniversary Toolkit - History: The First Fifty Years." *President's Council on Fitness, Sports & Nutrition*. Web. 22 Apr. 2012. <<http://www.fitness.gov/50thanniversary/toolkit-firstfiftyyears.htm>>.

age range, from Switzerland, Italy, and Austria. The test put the students through a number of different activities including leg lifts, sit-ups, trunk lifts, and toe touches. The results formed a report that “shocked” President Dwight Eisenhower to action: 56 percent of U.S. students failed at least one of the test components compared to only 8 percent of European children.

After one year’s delay due to a heart attack, President Eisenhower held a National Conference on Physical Fitness of American Youth on June 18-19 of 1956 at the United States Naval Academy. Eisenhower wished to prepare American youth for the physical stresses of adulthood and determine effective programs to promote physical activity among the youth. According to *The Making of American Physical Education*, Vice President Richard Nixon, the director of the conference, gave the keynote address and remarked that participation was surprisingly low: “less than fifty per cent of high school students...actually participate in physical-education programs; and he noted that there were no gymnasiums at all in over ninety per cent of the nation’s 150,000 elementary schools.”⁹ One month later, July 16, 1956, with executive order 10673, President Eisenhower established the National Council on Youth Fitness.

Historians cite Nixon’s statements, and those made by Secretary of the Department of Health, Education, and Welfare, from the conference as indications of a strong influence of AAHPERD on Eisenhower’s administration. Unsurprisingly, AAHPERD soon took to the forefront of the national youth physical fitness stage with its own conference. In mid-September of 1956, just months after the President’s conference, AAHPERD called together 116 leaders from the profession for the Conference on Youth

⁹ *The Making of American Physical Education*. Pg. 99

Fitness in Washington, D.C. They produced a report, in coordination with Dr. Shane MacCarthy, then-executive director of the Council on Youth Fitness, “outlining the proper physical education requirements for children and youth.”¹⁰

In mid-September 1957, AAHPERD held organizational meetings in Washington DC. The result of the meetings was the development of the original Youth Fitness Test (YFT) which, after President John Kennedy’s encouragement, was used in schools across the nation into the early 1980s.¹¹ Again, in 1959, AAHPERD rose to the forefront of the national physical education scene when it announced its sponsorship of a nationwide fitness program it called “Operation Fitness – USA.” It aimed to help others implement fitness programs by providing a manual with national norms and recording forms used in physical education and fitness programs. “As an incentive to participation, awards of all types [were] used...The Association has encouraged the holding of some thirty-five state fitness conferences and approximately thirty college and university fitness institutes.”¹² AAHPERD has since continued to serve as a major supporter for physical education in the United States and is seen as “the professional association with direct contact and influence in schools.”¹³

President John F. Kennedy and a National Movement

But after President John F. Kennedy was elected to office, the President-Elect, before assuming office, made sure to thrust physical education, physical activity, and fitness into the forefront of American’s minds. On December 26, 1960, *Sports Illustrated*

¹⁰ *The Making of American Physical Education*. Pg. 100

¹¹ James Morrow, Zhu Weimo, Meredith Marilu, and Christine Spain. "1958-2008: 50 Years of Youth Fitness Tests in the United States." *Research Quarterly for Exercise and Sport* 80.1 (2009): 1-11. Print.. Pgs. 2-3

¹² *The Making of American Physical Education*. Pg. 102

¹³ Morrow. Pg. 2

published an article written by JFK entitled “The Soft American.” In the article, citing the Kraus-Weber findings, he declared that “Americans...are neglecting their bodies - ...[their] physical fitness is not what it should be – [and] are getting soft. And such softness on the part of individual citizens can help to strip and destroy the vitality of a nation.”¹⁴ JFK believed that if America allows its physical fitness level to slip, then so will its place as the world leader for “physical fitness is as vital to the activities of peace as to those of war, especially when our success in those activities may well determine the future of freedom in the years to come.”¹⁵ Physical fitness, Kennedy argued, was not only important because of physical appearance, but because it was the spark and foundation for “dynamic and creative intellectual activity...[I]ntelligence and skill can only function at the peak of their capacity when the body is healthy and strong; that hardy spirits and tough minds usually inhabit sound bodies.”¹⁶

Thus, Kennedy argued, the first time a President had taken such a strong stance on physical activity, that physical fitness was so necessary and essential to the well-being of the country that physical activity, and therefore physical education, was a national, and federal, matter. Kennedy declared that due to the reduced physical activity lifestyle brought on by technological advancements, such as television and cars, once he took office, he would employ a national program to improve the fitness of all Americans. In this national program, Kennedy believed that

The physical fitness of our youth should be made the direct responsibility of the Department of Health, Education and Welfare.... The President and

¹⁴ John F. Kennedy. "The Soft American." *Sports Illustrated* 26 Dec. 1960. *SportsIllustrated.cnn.com*. Time Warner. Web. 22 Apr. 2012. <<http://sportsillustrated.cnn.com/vault/article/magazine/MAG1134750/index.htm>>.

¹⁵ Kennedy. <<http://sportsillustrated.cnn.com/vault/article/magazine/MAG1134750/2/index.htm>>

¹⁶ Kennedy. <<http://sportsillustrated.cnn.com/vault/article/magazine/MAG1134750/2/index.htm>>

all departments of government must make it clearly understood that the promotion of sports participation and physical fitness is a basic and continuing policy of the United States. By providing such leadership, by keeping physical fitness in the forefront of the nation's concerns, the federal government can make a substantial contribution toward improving the health and vigor of our citizens.¹⁷

As had been to President Eisenhower, Kennedy understood that the physical education system in America was failing its youth. He also understood the gravity of this problem.

Once Kennedy was in office, he continued to push forward the need for improved physical education and physical fitness. In 1962, President Kennedy wrote, "The Vigor We Need," another article in *Sports Illustrated*. Again, Kennedy expounded the necessity for a fit nation. But, Kennedy also declared that the President's Council on Youth Fitness "developed – in cooperation with 19 leading school and medical organizations – the basic concepts for a program of physical fitness now in use by more than half the country's public schools. In addition, the council helped to initiate special pilot fitness projects, involving more than 200,000 students in five states. The results were a dramatic proof of the value of carefully designed school physical fitness programs."¹⁸ The pilot program saw a change in the first six weeks, from a failing test score to a passing one, in 25% of participating students. An additional six weeks saw similar results and by the end of the year, an average of 80% of students who had failed, now passed the fitness test. In order to publicize and advertise the council's national plan, to be executed by "local school authorities," the council sent out more than 340,000 copies of the school physical fitness program by 1963. Kennedy credited the success of the plan to the cooperation between the President's Council on Youth Fitness and the 44 states present at the April 1962

¹⁷ Kennedy. <<http://sportsillustrated.cnn.com/vault/article/magazine/MAG1134750/3/index.htm>>

¹⁸ John F. Kennedy. "The Vigor We Need." *Sports Illustrated* 16 Jul. 1962.
SportsIllustrated.cnn.com. Time Warner. Web. 22 Apr. 2012.
 <<http://sportsillustrated.cnn.com/vault/article/magazine/MAG1074003/index.htm>>

conference. A historical overview by the President's Council on Youth Fitness, now called, the President's Council on Fitness and Sports, stated that "[t]he country readily embraced a public awareness campaign promoting physical fitness by the National Advertising Council, which blanketed 650 television stations and 3,500 radio stations. Even Peanuts creator Charles Schulz and other cartoonists joined the campaign by promoting exercise in cartoon strips."¹⁹

In late 1962, President Kennedy discovered an executive order from President Theodore Roosevelt challenging U.S. Marine officers to finish fifty miles in twenty hours. Kennedy passed on this finding to Marine Gen. David Shoup, and asked he test the marines accordingly. When this challenge reached the public, already swept up in the fitness fury, they took it as a personal challenge from the president. Letters from schoolchildren and adults arrived in floods at the White House and newspapers across the nation printed reports of those who accomplished the feat.²⁰ The energy for physical activity and physical education had swept the nation in a way that the country had never, and to this day has not, embraced.

By the end of the Kennedy's three years in office, physical education had risen to the forefront of the national attention. Some adults of today remember the 50-mile hike challenge while many more remember the Robert Preston "chicken fat" song and dance (or the line, "Go, You Chickenfat Go!!!"), inspired by Kennedy's call to physical activity, was sent by the President to schools across the nation to be used as an exercise

¹⁹ "The President's Council on Physical Fitness and Sports - 50th Anniversary Toolkit - History: The First Fifty Years."

²⁰ Paul Kiczek. The 50-Mile Hike Phenomenon: A Look Back at the New Frontier of Fitness [Internet]. Version 2. 50milehikers. 2011 Dec 17. Available from: <http://50milehikers.wordpress.com/article/the-50-mile-hike-phenomenon/>.

song. Schools were employing physical fitness testing, and seeing improved results. But with the assassination of Kennedy, much of the momentum that the President had worked so hard to build was lost.²¹

Post-Kennedy

When Lyndon Johnson took over as president, he set out to reform education as a whole. While he tried to keep physical education to the forefront, the national attention and excitement quickly fell to the wayside. Physical education did not hold prominence in LBJ's "War on Poverty." His most notable achievements during his term were to collect data for development of the youth, to bring medical professionals into advisory, and collaborating, roles on, and with the council, and to expand the council's scope to include sports.

The President's Council on Physical Fitness, renamed in January of 1963 to include all Americans and not just the youth, organized a second survey in 1964. And in 1966, AAHPERD, in collaboration with the council, issued the Presidential Physical Fitness Award to students displaying exceptional achievement in physical fitness levels.²² However, the success of the Presidential Physical Fitness Award is dubious.²³

In 1965, LBJ led the charge for education reform in his war on poverty. On April 11, 1965, he signed into law the Elementary and Secondary Education Act (EASA), which was last reauthorized in March of 2010 by the Obama administration. EASA

²¹ Missy McNatt. "Child's Letter to President John F. Kennedy about Physical Fitness." *CBS Interactive*. CBS Interactive Business Network, 01 Jan. 2009. Web. 22 Apr. 2012. <http://findarticles.com/p/articles/mi_hb6541/is_1_73/ai_n31464205/pg_3/?tag=content;coll1>.

²² "The President's Council on Physical Fitness and Sports - 50th Anniversary Toolkit - History: The First Fifty Years."

²³ Sharon Plowman. "The History of Fitnessgram." *Journal of Physical Activity & Health* 3.2 (2006): S5-S20. Web. 22 Apr. 2012. <<http://www.fitnessgram.net/JPAH/HistoryOfFG.pdf>>. Pg. S7-S8

emphasized preventing the formation of national curricula, and under LBJ's leadership, physical education returned to the states. And by the 1970s, 9 states had created and designed their own offshoot of the YFT.

Mounting dissatisfaction with the 15 year old fitness test and teaching methods led to a review of the methods and test.²⁴ However, the committee, which comprised of members of the Measurement and Evaluation Council and the Physical Fitness Council of AAHPER, was unsuccessful as its suggestions were greeted with small changes to the YFT. Less than one year later, in 1976, a larger committee, which included members of the aforementioned groups and the Research Council (now known as the Research Consortium) of AAHPER, and President's Council on Physical Fitness and Sports (LBJ had changed the name to include Sports in the council's purview), sent *A Position Paper on Physical Fitness* to AAHPER which, according to *The History of Fitnessgram*, "called for a revision of the AAHPER YFT and set as a basic goal the relating of physical fitness to functional health and not sport performance."²⁵ However, these recommendations were also not accepted. The groups continued to talk and try to work out an agreeable recommended and suggested curriculum and fitness test. Only after 10 years, was the new test, known as Fitnessgram, recognized and implemented on a national basis.²⁶

When President Ronald Reagan took office in 1981, he sought to reinvigorate physical activity and physical education in the nation by working with private companies to produce a culture for healthy living and physical activity. Soon after taking office, Reagan issued Executive Order 12345 where he immediately called for the Secretary of

²⁴ *Ibid.* S7

²⁵ *Ibid.* S7

²⁶ *Ibid.* S6

Health and Human Services to “Assist educational agencies at all levels in developing high quality, innovative health and physical education programs which emphasize the importance of exercise to good health.”²⁷ As mentioned earlier, Fitnessgrams, was a test developed almost completely separately from AAHPER and the federal government, instead created by a non-profit, the Cooper Institute. But the Cooper Institute lacked the funds to adequately promote the campaign. The Campbell Soup Company’s Institute for Health and Fitness “signed on as a national sponsor to support the promotion and dissemination of the tool.”²⁸ Eventually, this partnership applied enough pressure to AAHPER to bring Fitnessgrams into recommended use in AAHPER’s testing manuals. But while these partnerships have shown small success, the impact on physical education has been small and largely ineffective. Today, Fitnessgrams is only used in a select few cities and districts across the nation despite its value in tracking important fitness data, both for national trends and individual progress, through a superior test.

Physical Education’s Return to non-federal Entities

With the federal government taking a back seat in promoting physical education directly, School Specialty, a company that provides tools for educators, in 1989, started SPARK PE to “improve the health of children” by providing research- and evidence-based programs and curricula for physical education, after school, and early childhood education programs.²⁹ However, without much government support, SPARK PE has not been as widely disseminated as needed. A 2006 study found that despite the plethora of “effective, evidence-based physical activity interventions [such as the programs

²⁷ Exec. Order No. 12345, 3 C.F.R. (1982).

²⁸ Sharon Plowman. S5

²⁹ "10 Things You Must Know." *SPARK PE*. School Specialty. Web. 22 Apr. 2012. <<http://www.sparkpe.org/what-is-spark/10-things-you-should-know/>>.

developed by SPARK,]...[a] lack of dissemination and diffusion evaluation research and policy advocacy is one of the factors limiting the impact of evidence-based physical activity interventions on public health.”³⁰ As the authors of the study state, the dissemination of these programs are best applied in school, which are the “logical settings for youth health promotion programs, as no other institution[s] has as much continuous and intensive contact with children during their first two decades of life.”³¹ However, a deficiency in the emphasis of supporting physical education programs has resulted in a lack of dissemination of such physical education programs.

Presidents George H.W. Bush and Bill Clinton also followed in Reagan’s footsteps, directing the PCPFS to support private businesses and organizations instead of examining the status of physical education classes throughout the country. In fact, “[as of 2008,] it has been a quarter century since national youth fitness levels were measured with the National Children and Youth Fitness Studies...and the National School Population Fitness Survey.” However, “the National Health and Nutrition Examination Survey assesses components of child, youth, and adult physical fitness, including body composition and cardiovascular fitness and physical activity” but does not test for physical fitness levels and thus has left an incomplete picture regarding the current fitness levels of American students.³² But recent re-introduced fitness testing by states such as California and Texas has shown that large majorities of students fail fitness testing across numerous categories.

³⁰ Owen, N., K. Glanz, J. Sallis, and S. Kelder. "Evidence-Based Approaches to Dissemination and Diffusion of Physical Activity Interventions." *American Journal of Preventive Medicine* 31.4 (2006): S35-44. Web. 22 Apr. 2012. <http://www.sph.emory.edu/EPRC/resources/pubs/glanz_evidence-based%20approaches.pdf>. S35

³¹ *Ibid.* S36

³² “1958-2008: 50 Years of Youth Fitness Tests in the United States.” Pg. 1

After Kennedy was assassinated in 1963, physical education's upward trajectory fell and has never recovered. Since then, the standards, which increased and improved as early as the inception of physical education into state laws regarding public schools in the early 1920s and 1930s (and as early as 1860s in California), have been left behind. Physical Education, which was increasingly becoming a federal endeavor, has since been left almost completely to the states.

But, as the federal government saw fit to step in to improve reading, math, and science scores with LBJ's EASA, Ronald Reagan's 1983 Improving America's School Act, and Bill Clinton's Goals 2000 Educate America Act the national government continued to avoid any emphasis on physical education or physical fitness. The last 10 years, led by President George W. Bush's No Child Left Behind has forced schools to focus more and more on "academic" subjects, leading to the cancellation of physical education programs by school districts, and the removal of mandatory physical education requirements in state laws. Although recent attempts by the Obama Administration have reemphasized the need for physical activity, it is possible that NCLB inadvertently pushed states to abandon the preservation of physical education leading to the decrease in physical education programs, and the failure to meet state requirements. Given that federal restrictions have hurt physical education, can federal policy reverse this problem? An examination of the effects of No Child Left Behind on physical education will best answer this question.

3. The Current Status of Physical Education: How the States have Dropped the Ball

The Effects of Federal Regulation on Physical Education

With the decline in federal support for physical education in grades K-12, physical activity and education participation decreased. In 1996, the federal report, *Physical Activity and Health*, wrote “that 60 percent – well over half – of Americans are not regularly active. Worse yet, 25 percent of Americans are not active at all... [and] daily enrollment in physical education classes has declined among high school students from 42 percent in 1991 to 25 percent in 1995.”¹ Of those who did participate in physical activity, 70 percent, down from 81 percent, stated that they were active for at least 20 minutes in physical education classes, while only 19 percent of high school students engaged in more than 20 minutes of physical activity per class.

Congress believed that the solution to this problem was to provide more funding to physical education programs through a grant. In December of 2000, the Physical Education for Progress Act 2001 (PEP Act) was attached to the omnibus budget bill, which was eventually signed by President George W. Bush. The act was designed to “award grants and contracts to local education agencies to enable the local educational agencies to initiate, expand and improve physical education programs for all kindergarten through 12th grade students.”² The next year, the grant program was renamed the Carol

¹ United States. Department of Health and Human Services. Office of the Surgeon General. *Physical Activity and Health*. By Audrey Manley. *Fitness.gov*. Web. 22 Apr. 2012. <<http://www.fitness.gov/execsum/execsum.htm>>.

² Physical Education for Progress Act, United States Code § 20-8001. Web. 22 Apr. 2012. <<http://www.pecentral.org/professional/pepbill/pepbillpassed.html>>

M. White Physical Education Program and written into subpart 10 of the No Child Left Behind (NCLB) Act, which was signed into law just over a year after the PEP Act.

The first year's grants totaled \$5 million dollars and significantly increased throughout the years. In 2010, the grants totaled \$36.1 million in single year programs and \$43.9 million in multiyear programs dating back to 2008 and 2009, for a yearly sum of \$80 million. From 2001 – 2010, more than \$600 million of PEP grants had been awarded to schools across the nation.

Upon taking office, George Bush made education reform one of his top priorities, sending his No Child Left Behind (NCLB) plan to Congress in late January of 2001. On January 8, 2002 the President signed the bill. NCLB aimed to “ensure that all children have a fair, equal, and significant opportunity to obtain a high-quality education and reach, at a minimum, proficiency on challenging State academic achievement standards and state academic assessments.”³ The plan placed a heavy emphasis on math, reading, and science through standardize testing assessments. Schools that failed to comply with its standards or received poor test scores – by not making “Adequate Yearly Progress” (AYP) – faced the penalty of losing significant federal funding. Six straight years of AYP resulted in a takeover of the school by the government which could include shutting down the school. As a result of the significant risks schools faced from compliance standards in NCLB, districts focused their resources, including money, on the three – math, science, and reading – tested subjects.

However, the funding was insufficient to sustain a physical education program but was meant more for supplementing already existing physical education programs. The

³ No Child Left Behind Act of 2001, United States Code, 20 USC 6301 (Education Department 2001). <<http://www2.ed.gov/policy/elsec/leg/esea02/107-110.pdf>>.

funding included in NCLB was mainly for equipment and teacher training purposes. Additionally, only 76 school districts received a grant – according to the U.S. Census Bureau, as of June 30, 2011, there are more than 14,000 public school districts in the country; the grants could not possibly support physical education programs across the nation.⁴

States and school districts felt the mounting pressure from the federal government to improve standardized test scores. Districts often minimized or reduced their physical education programs in order to siphon those resources towards math, science, and reading despite state laws requiring physical education time minimums. Some states decreased the requirements allowing for alternatives to satisfy physical education class and time requirements. With physical education in the United States already eroded, No Child Left Behind tipped the scales resulting in a collapse of physical education programs and state laws across the nation.

Many School Districts attempted to meet the requirements of NCLB by reducing or eliminating physical education programs (and those in the arts). Fox News journalist Jodi Noffsinger reported that “[t]he resources required to meet [the standards of NCLB], administrators say, leave little left over for non-core programs.”⁵ Educators complain that NCLB created a “need to ‘teach to the test,’ and administrators dedicated additional class time to ensure their schools met the requirements and avoided being labeled ‘failing schools.’ As a result, time devoted to electives such as art, music and P.E. plummeted.”⁶

⁴ United States. Department of Commerce. Bureau of the Census. *School Districts*. 30 June 2011. Web. 22 Apr. 2012. <<http://www.census.gov/did/www/schooldistricts/>>.

⁵ Jodi Noffsinger. "Phys Ed Cuts May Leave Children's Health Behind." *Fox News*. FOX News Network, 20 Nov. 2005. Web. 22 Apr. 2012. <<http://www.foxnews.com/story/0,2933,176168,00.html>>.

⁶ Mark Fainaru-Wada. "Critical Mass Crisis: Child obesity." *ESPN.com*. 26 Mar. 2009. Web. 22 Apr. 2012. <<http://sports.espn.go.com/espn/otl/news/story?id=4015831>>.

Physical Education as a “secondary” subject

Physical Education is consistently viewed as a “secondary” subject, not nearly as important as the “core” subjects of math, science, and language arts. The California Endowment published the report, *Physical Education Matters*, in January of 2008 in which they stated that “[t]he University of California and comparable institutions do not consider PE grades in their admissions process, adding to the low academic value of PE...California does not require PE grades to be included in GPA.”⁷ Some states, such as Missouri “stipulate PE must be passed to graduate high school,” most do not mandate that a student spend a significant number of terms in physical education classes, nor do most require students pass a physical fitness test in order to graduate.⁸

The CDC and NASPE recommend 150 minutes of moderate-intense aerobic activity per week.⁹ The U.S. Department of Health and Human Services recommends that kids aged 6-17 years participate in at least 60 minutes of physical activity every day.¹⁰ NASPE recommends that schools provide physical education “[i]nstruction periods totaling a minimum of 225 minutes per week (...secondary school).”¹¹ But in 2007, the CDC found that only 3.8 percent of elementary schools, 7.9 percent of middle schools,

⁷ *Physical Education Matters*. Rep. 2008. The California Endowment, Jan. 2008. Web. 22 Apr. 2012.
<http://www.calendow.org/uploadedfiles/publications/by_topic/disparities/obesity_and_diabetes/pe%20matters%20long%20versionfinal.pdf>. [Pg. 4](#)

⁸ *Ibid.* Pg. 4

⁹ "How Much Physical Activity Do Adults Need?" *Centers for Disease Control and Prevention*. Centers for Disease Control and Prevention, 01 Dec. 2011. Web. 22 Apr. 2012.
<<http://www.cdc.gov/physicalactivity/everyone/guidelines/adults.html>>.

¹⁰ United States. Department of Health and Human Services. *2008 Physical Activity Guidelines for Americans*. By Michael Leavitt. *Health.gov*. Web. 22 Apr. 2012.
<<http://www.health.gov/PAGuidelines/pdf/paguide.pdf>>.. Pg. 16

¹¹ American Alliance for Health, Physical Education, Recreation and Dance. National Association for Sport and Physical Education. *Physical Education Is Critical to Education the Whole Child*. AAHPERD.org. 2011. Web. 22 Apr. 2012. <<http://www.aahperd.org/naspe/standards/upload/Physical-Education-Is-Critical-to-Educating-the-Whole-Child-Final-5-19-2011.pdf>>. Pg. 2

and 2.1 percent of high schools provide daily P.E. Even worse, ESPN's Mark Fainaru-Wada from Outside the Lines reported that "22 percent of schools do not require any P.E. and nearly half – 46 percent of high school students were not attending any P.E. classes when surveyed by the CDC."¹²

Many states came to understand that additional physical activity was required to fight the obesity epidemic; so many increased time requirements. In fact, a NASPE publication, *Shape of the Nation* found that "[o]ver seventy percent of states (36) mandate physical education for elementary school students, 65 percent of states (33) mandate it for middle/junior high school students, and 83 percent of states (42) mandate it for high school students."¹³ Still, many of these state laws cannot be, or are not, met by the schools. At a South Carolina statewide training session for physical education teachers, instructors were asked if they were able to match the required 90 minutes of physical education, up from 30 minutes, per week as stated in Section 59-10-10 (A) of the Students Health and Fitness Act of 2005 passed by the South Carolina General Assembly and signed by the governor on June 1, 2005.¹⁴ One teacher, Pete Ellis told Fainaru-Wada that "two or three out of 100 educators raised their hands... [Ellis'] kids at Easterling[, the school where Pete Ellis teaches P.E.,] get about 70 minutes per week."¹⁵

¹² Mark Fainaru-Wada

¹³ *Pe4life.org*. Rep. NASPE, May 2006. Web. 22 Apr. 2012.

<https://docs.google.com/viewer?a=v&q=cache:7dcy8LUao-wJ:www.pe4life.org/UserFiles/File/NASPE_Shape_of_the_Nation.doc+&hl=en&gl=us&pid=bl&srcid=ADGEESim_RfmgyLYKDgKpDJA76nd341N6xxMpMc-n7y3IT0fmsCcfW5UuCp3QguqKyYyMLKZCGuBZF5qrLNILgxagDbGVIG8rdQLm6TvHvOQJ3hw54jbfzjsZ-MxYJ1d61EVqkkzMU_&sig=AHIEtbT_9FenxRGUqtio7oDCf-8WqnwYXA&pli=1>. Pgs. 4-5

¹⁴ South Carolina Code §59 (2005). "Students Health and Fitness Act of 2005."

<http://www.scstatehouse.gov/sess116_2005-2006/bills/3499.htm>

¹⁵ Mark Fainaru-Wada

A recent study by the New York state comptroller found that almost every New York school and district failed to comply with state requirements, matching Ellis' account in South Carolina. New York is one of five states, including Illinois, Iowa, Massachusetts, New Mexico and Vermont that sets minimum amounts of time requirements for physical education in grades K-12 while New Jersey and Rhode Island require physical education in grades 1-12. New York requires 120 minutes of physical education class a week through sixth grade, and at least 90 minutes a week for seventh and eighth grades. Fernanda Santos of the *New York Times* wrote that auditors visited select schools to determine if the schools satisfied these time requirements. What is now of little surprise, "[n]one of the schools were in full compliance. Nine of them – five in Brooklyn, one in Manhattan and three in Queens – offered physical education classes, but not as often as required."¹⁶ According to Santos, while some schools blamed the principal's ignorance of the state laws, others cited the "lack of money" and "space" as the primary causes for a failure to satisfy the requirements.

Additionally, numerous states allow for alternatives to physical education for compliance. Some states and school districts have allowed for band, ROTC, or participating in a varsity sport to count as one credit, or class, of physical education. NASPE revealed that in 2006, "[j]ust over one-third of states (18) grant exemptions/waivers for school districts regarding physical education time or credit requirements. More than half of states (27) permit school districts or schools to allow students to substitute activities for their required physical education credit. Among those

¹⁶ Fernanda Santos. "Audit Finds City's Schools Short on Physical Education." *NYTimes.com*. The New York Times Company, 4 Oct. 2011. Web. 22 Apr. 2012.
<http://www.nytimes.com/2011/10/05/nyregion/many-city-schools-dont-provide-physical-education-audit-finds.html?_r=1>.

states, the most common allowances are for ROTC (18), interscholastic sports (17), and marching band (11).”¹⁷ However, by 2010, the number of states that granted alternatives had increased. *Shape of the Nation 2010* uncovered that “[m]ore than half of all states (32) permit school districts or schools to allow students to substitute other activities for their required physical education credit.”¹⁸ Ten states also included cheerleading in addition to the relatively unchanged numbers in ROTC, sports, and marching band. More disheartening was the fact that 30 states, an increase from 18 in 2006, allowed “schools or school districts to grant exemptions/waivers for physical education time or credit requirements, although they are not necessarily the same states that allow substitutions....Of the states allowing exemptions or waivers, all but five leave the reasons for, and granting of, waivers to the local school or school district.”¹⁹

However, Fainaru-Wada wrote that Ellis argued that “getting a ‘credit’ for physical education and actually spending a semester exercising are two different things. Many districts waive the physical education requirement for students taking band or ROTC or playing a sport. Yet none of those activities adequately equips a young person with the knowledge needed to sustain a fit and healthy lifestyle.”²⁰ And with the obesity epidemic still ravaging the nation, it is difficult to argue otherwise.

Nevertheless, states are trying to combat obesity by increasing standards. Numerous states have passed new laws replacing decade-old physical education

¹⁷ *Pe4life.org*. Rep. NASPE, May 2006

¹⁸ *Shape of the Nation Report 2010 - Status of Physical Education in the USA*. Rep. AAHPERD.org. American Heart Association, 2010. Web. 22 Apr. 2012. <<http://www.aahperd.org/naspe/publications/upload/Shape-of-the-Nation-2010-Final.pdf>>. Pg. 7

¹⁹ *Ibid.* Pg. 7

²⁰ Rebecca Jones. "Physical Education Atrophies in Colo. Schools." *EdNewsColorado*. 26 Mar. 2010. Web. 22 Apr. 2012. <<http://www.ednewscolorado.org/2010/03/26/3930-physical-education-atrophies-in-colorado-schools>>.

requirements in fitness time, testing, and grading requirements. Many states have increased these requirements in the last half-decade in order to try to combat the obesity epidemic.

Shape of the Nation 2010 reported that “of the 45 states requiring high school physical education...[38] dictate a specific number of credits required for graduation,” which seems to indicate that 7 states require a specific time requirement.²¹ In 2006, 10 states required a certain number of minutes per week for physical education.²² “Among those 10 states that mandate minutes per week for high schools, three states (Indiana, Montana, South Carolina) and the District of Columbia meet that national recommendation of 225 or more minutes per week. Eight states (including the four that require 225 or more minutes) provide at least 135 minutes per week, and only one state mandates less than 45 minutes per week.”²³ In this report, *Shape of the Nation 2006* seemed to include physical activity and physical education laws.

Almost across the board, more states, in 2010, included physical education testing regulations since 2006. *Shape of the Nation 2010* found that “[o]nly 37% of states (19) require some form of student assessment in physical education. Among the states that do require assessment, 74% (14) require assessment of physical fitness, 37% (7) require assessment of knowledge of physical education content, 26% (5) require assessment of participation in physical activity outside of physical education class, and 32% (6) require assessment of personal/social responsibility in physical education.”²⁴ We can compare

²¹ *Shape of the Nation Report 2010 - Status of Physical Education in the USA* . Pg. 7

²² *Shape of the Nation Report 2006 - Status of Physical Education in the USA*. Rep. Heartland.org. Web. 22 Apr. 2012.

<http://heartland.org/sites/all/modules/custom/heartland_migration/files/pdfs/21578.pdf>.. Pg. 6

²³ *Ibid*. Pg. 7

²⁴ *Shape of the Nation Report 2010 - Status of Physical Education in the USA*. Pg. 8

this to 2006 in which “[o]nly 29 percent of states (15) require[d] student assessment in physical education. Among the states that... require[d] assessment, 73 percent (11) require[d] assessment of physical fitness, 67 percent (10) require[d] assessment of knowledge, ... 20 percent (3) require[d] assessment of participation in physical activity outside of physical education class, and 13 percent (2) require[d] assessment of personal/social interactions in physical education.”²⁵ In all categories, except for the requirement of assessment of knowledge of physical education content, states increased their requirements.

Grading requirements among the 50 states both increased and decreased depending on the specific subcategory. In 2006, twenty two states required physical education grades to be included in a student’s grade point average (GPA).²⁶ By 2010, that number decreased “slightly from 2006 [to] just 27% of states (14) [that] require[d] physical education grades to be included in a student’s grade point average (GPA).”²⁷ In 2010, “Eighteen states [had] a required comprehensive assessment test for graduation, but only five include[d] physical education achievement in the test.”²⁸ This was a small increase from 2006 in which “[s]ixteen states [had] a required comprehensive assessment test for graduation, but none include[d] physical education achievement.”²⁹ In 2010, the number of states with an education report card also decreased. In 2006, 45 states [had] an educational report card... but only three states include[d] physical education on their state report card.”³⁰ In 2010, forty states had “an education ‘report card’ for each school; only

²⁵ *Shape of the Nation Report 2006 - Status of Physical Education in the USA*. Pg. 7

²⁶ *Ibid.* Pg. 7

²⁷ *Shape of the Nation Report 2010 - Status of Physical Education in the USA*. Pg. 8

²⁸ *Ibid.* Pg. 8

²⁹ *Shape of the Nation Report 2006 - Status of Physical Education in the USA*. Pg. 7

³⁰ *Ibid.* Pg. 7

five states include[d] physical education as one of the academic areas on the annual report from schools to the state.”³¹

As a result of the federal regulations, states have had to be imaginative and creative in designing physical education state laws, and school districts in satisfying those requirements what with the small amount of money designated for physical education. In July of 2009, the Roslow Research Group presented *Physical Education Trends in Our Nation's Schools* to NASPE, in which they asserted that “[t]he median physical education budget for schools in the United States is only \$764 per school year (\$460 for elementary, \$900 for middle, and \$1,370 for high schools), and 61% of physical education teachers report an annual budget of under \$1,000. Only 15% have funding of \$2,000 or more.”³² From 2006 to July of 2009, 45% of schools reported to the Roslow Research Group that their budgets have remained about the same while 36% reported decreased budgets. As it is, few schools have the money to sustain the bare bones of a physical education program, let alone try out new programs that may necessitate the purchase of new equipment.

With the recession, not only did many schools have trouble maintaining a physical education budget, but they could not pay for the teachers and many P.E. teachers lost their jobs as programs were cut. Christina Villavicencio, principal at P.S. 197 in New York, told the *New York Times*, “‘when you’re given a limited budget, you have to ask yourself, ‘What’s the priority?’ ...Should I hire another science teacher or a gym teacher?’”³³ All teachers have felt the squeeze, as SPARK writes on its website, that

³¹ *Shape of the Nation Report 2010 - Status of Physical Education in the USA*. Pg. 8

³² *Physical Education Trends in Our Nation's Schools - A Survey of Practicing K-12 Physical Education Teachers*. Rep. AAHPERD.org. July 2009. Web. 22 Apr. 2012.
<<http://www.aahperd.org/naspe/about/announcements/upload/PE-Trends-Report.pdf>>.

³³ Fernanda Santos. "Fittin In Exercise, Between Math and English." *NYTimes.com*. The New York Times Company, 19 Oct. 2011. Web. 22 Apr. 2012.

“between August 2008 and August 2011 300,000 teaching jobs were lost...If the automatic spending cuts are enacted for the fiscal year 2013, education faces \$3 billion in cuts.”³⁴ Faced with the decision to cut teachers and programs, the physical education program is one of the first subjects to receive the axe. It is safe to assume that a large number from SPARK’s website includes physical education teachers.

Thus, changing state laws has produced little improvement among school districts’ abilities to meet Physical Education state requirements or national suggestions. Schools across the nation simply cannot keep up with state standards. Raising the bar does not help a struggling school. Rebecca Jones of *Education News Colorado* detailed the new standards adopted by Colorado’s Board of Education in December of 2009 which were hailed as integrating “21st century concepts of health and wellness into time-tested physical education practices [and] promote the creation of individualized physical activity plans and...provide students with the skills to assess their own fitness needs throughout their lifetimes.”³⁵ The one problem, Jones pointed out, is that these standards do not “dictate whether [physical education is] taught.”³⁶

States’ Ineffective Fight against the National Juvenile Obesity Problem

As mentioned earlier, when South Carolina raised physical education standards, schools were not able to suddenly comply with the new standards. On June 22, 2011, South Carolina passed the state budget for Fiscal Year 2011 which, despite increasing the state’s per-student spending from \$1,615 to \$1,880, does not meet the \$2,720 required

<http://www.nytimes.com/2011/10/20/nyregion/at-new-york-schools-finding-time-for-exercise.html?_r=1&emc=eta1>.

³⁴ *The Effect of Budget Cuts on Physical Education*. Digital image. *Spark PE*. SparkPE.org. Web. 22 Apr. 2012. <<http://www.sparkpe.org/blog/wp-content/uploads/pe-infographic.jpg>>.

³⁵ Rebecca Jones. "Physical Education Atrophies in Colo. Schools."

³⁶ Rebecca Jones. "Physical Education Atrophies in Colo. Schools."

under federal law by a state school funding formula, and unsurprisingly, included a \$4 million cut from physical education programs.³⁷ In 2004, one year before the Students Health and Fitness Act of 2005 passed, South Carolina ranked 10th in obesity, according to “F as in Fat,” among the 50 states with 25.1% of its population obese.³⁸ Six years later, the 2011 publication of “F as in Fat” ranked South Carolina as 8th in the nation with an obesity rate of 30.0%.³⁹ With schools under-funded and school districts receiving less funding for their physical education programs, how can schools be expected to comply?

The difficulty in combating obesity is not just in passing a law to increase time requirements and raise standards, but is in the department of education’s follow-through. It seems that many states are not holding schools and school districts accountable. *F as in Fat 2011* found that “[n]ationwide, less than one-third of all children ages 6–17 engage in vigorous activity, defined as participating in physical activity for at least 20 minutes that made the child sweat and breathe hard.”⁴⁰ In some states, “[t]he percentage of children engaging in daily, vigorous physical activity ranged from a low of 17.6 percent in Utah to a high of 38.5 percent in North Carolina.”⁴¹ The RWJ Foundation, which is responsible for the *F as in Fat* study and publication declared that despite the numerous requirements that states create, they “are often limited or not enforced, and many programs are inadequate.”

³⁷ "South Carolina State Budget." *SunshineReview.org*. Sunshine Review. Web. 22 Apr. 2012. <http://sunshinereview.org/index.php/South_Carolina_state_budget>.

³⁸ Paris Glendening. *F as in Fat: How Obesity Policies Are Failing in America 2005*. Rep. *Healthy.kaiserpermanente.org*. Kaiser Permanente, 2005. Web. 22 Apr. 2012. <http://info.kp.org/communitybenefit/assets/pdf/our_work/global/ObesityReport.pdf>.

³⁹ Jeffrey Levi. *F as in Fat: How Obesity Threatens America's Future 2011*. Rep. Robert Wood Johnson Foundation, July 2011. Web. 22 Apr. 2012. <<http://healthyamericans.org/assets/files/TFAH2011FasInFat10.pdf>>.

⁴⁰ *Ibid.* Pg. 7

⁴¹ *Ibid.* Pg. 7

But when the state departments do check-up on the schools, there is little that can, and is, done. It would be interesting to see if South Carolina were to perform a check on each school district to see whether or not they complied with the 2005 state law that was passed, as had been done in New York. And in fact, in the spring of 2011, the State of South Carolina Department of Education did the next best check-up and sent out an online survey, as mandated by the 2005 law, to its school districts asking a range of questions to determine whether or not the schools' programs satisfied and complied with the increased standards of the 2005 law. The survey found that in the 2010-2011 school year, "Ninety-Five percent of the schools [met] the requirement for 90 minutes of physical activity per week for students," up from 90% the previous year, 84% in the year before that, and 92% in the 2007-2008 school year.⁴² However, the report also stated that "[m]ost of the physical activity time provided students is unstructured."⁴³ Additionally, "A sample size of 2,600 responding teachers in an online survey of over seven thousand teacher responses concluded that fifty-two percent of schools submitting reports meet the requirement for 60 minutes of physical education per week. This shows a continued downward trend in compliance with the Student Health and Fitness act over a four year period."⁴⁴

The South Carolina Department of Education also asked schools what were the largest hurdles and challenges that prevented them from complying with the 2005 law. "Logistical issues were major changes. Schools cited record keeping, class scheduling and coordination with classroom teachers as major challenges to implementation of the

⁴² Mick Zais. *SCStatehouse.gov*. Rep. South Carolina Legislature, 1 Dec. 2011. Web. 22 Apr. 2012. <<http://www.scstatehouse.gov/reports/DeptofEducation/SHFAExecutiveReport2010-11.pdf>>.. Pg. 3

⁴³ *Ibid.* Pg. 3

⁴⁴ *Ibid.* Pg. 2

law. Funding was also a primary challenges to implementation.”⁴⁵ It seems that teachers were in need of training in order to be able to execute such a change in curricula and programming. This training costs money and would need to come from somewhere; however, as funding was also a primary challenge, it seems highly unlikely that this obstacle could easily be cleared. Additionally, lack of funding could signify, coupled with logistical issues, a lack of teachers. Due to the cuts in funding for physical education, it is highly likely that schools could no longer afford to keep as many physical education teachers making it all the more difficult to field the minimum number of teachers needed to hold the number of classes to comply with the 2005 state law.

However, as in New York, there seems to be few consequences to the schools that failed. In fact, it does not seem that the responses corresponding to specific schools and districts were recorded but instead only compiled as a data point. As a result, there are no consequences to these schools and little will change. The President’s Council on Physical Fitness and Sports pointed to the “[f]ormer Surgeon General of the United States David Satcher, an ardent supporter of the role of physical education [who] said: ‘I think we’ve made a serious error by not requiring physical education. We are paying a tremendous price for this physical inactivity epidemic affecting our country. People are paying with pain and suffering and society pays with money and lost productivity. Physical education should be mandatory in kindergarten through 12th grade.’”⁴⁶ Instead, physical education

⁴⁵ *Ibid.* Pg. 3

⁴⁶ "School Physical Education as a Viable Change Agent to Increase Youth Physical Activity." *President's Council on Physical Fitness and Sports Research Digest* 10 (June 2009). *Fitness.gov*. Department of Health and Human Services, June 2009. Web. 22 Apr. 2012. <<http://www.fitness.gov/publications/digests/digest-june2009-508version.pdf>>.. Pg. 1

has been relegated to a second-class subject; incorrectly considered unimportant to academic achievement and is therefore the first to be cut.

Federal Ignorance of Physical Education in Education Reform

The publication of the 1983 report, “A Nation at Risk,” composed by a commission appointed by President Ronald Reagan, stressed the need for increased instruction in math, science, English, social studies, computer science, and a foreign language.⁴⁷ Numerous other reforms were recommended by the panel, however few were immediately implemented. Since then, U.S. Presidents have made a point to be the “Education President” and bring the reform and change needed to improve the system and its results.

However, these past attempts at reform have stressed the academic subjects and left physical education behind. Former President George H.W. Bush pushed standards-based education reform in these academic subjects. In 1989, he organized a meeting with all 50 state governors and members of Congress to create a plan and system to evaluate and improve the education in America. During his State of the Union address in January of 1990, Bush argued that in order to maintain economic competitiveness, “In critical subjects -- at the 4th, 8th, and 12th grades -- we must assess our students’ performance. By the year 2000, U.S. students must be the first in the world in math and science achievement...Every school must offer the kind of disciplined environment that makes it possible for our kids to learn. And every school in America must be drug free.”⁴⁸ The

⁴⁷ United States. Department of Education. *A Nation at Risk - April 1983*. Ed.gov. Web. 22 Apr. 2012.

⁴⁸ *Ibid.*

extent of improving physical education was to eradicate drugs, but not to ensure that certain physical fitness or obesity standards were met.

In 1999, President Bill Clinton proposed his education reform package, the “Education Accountability Act.” The plan was meant to hold states and school districts accountable for improving results. President Clinton stated that while there was some success, there was a significant problem: “While our 4th graders outperform their peers in other countries in math and science, our 8th graders are around average, and our 12th graders rank near the bottom.”⁴⁹ This bill failed to pass, but President George W. Bush took up the reigns with the “No Child Left Behind Act,” a.k.a. NCLB, which, as the conservative think-tank, The Heritage Foundation, denotes, “Reviewing the Clinton plan, one can't help but notice similarities to No Child Left Behind, a centerpiece of President Bush's domestic policy.”⁵⁰ Thus it should not surprise us that NCLB also focused on raising test scores, specifically in math and science. Physical Education once again took a back-seat.

With such little federal assistance for physical education programs, by 2008, a report published by the Robert Wood Johnson Foundation called *F as in Fat: How Obesity Policies are Failing in America 2008*, found that adult obesity rates, as defined as a measurement of greater than 30 on the Body Mass Index scale, continued to rise in 37

⁴⁹ Bill Clinton. "State of the Union Address (January 19, 1999)." Address. 1999 State of the Union Address. Miller Cetner, Charlottesville, VA. 19 Jan. 1999. *Millercenter.org*. University of Virginia. Web. 22 Apr. 2012. <<http://millercenter.org/president/speeches/detail/5496>>.

⁵⁰ Evan Feinberg, and Dan Lips. "Remembering Who Opposed President Clinton's Education Plan." Web log post. *Heritage.org*. The Heritage Foundation: Leadership for America, 14 Aug. 2007. Web. 22 Apr. 2012.

states and did not decrease in any state.⁵¹ In fact, their 2011 report, *F as in Fat: How Obesity Threatens America's Future 2011* showed that Colorado, the only state with a 2010 rate of overweight and obesity below 20% (19.8%), was in the same class as the four 1991 states, West Virginia, Mississippi, Louisiana, and Michigan, with the highest rates of obesity just 20 years ago – all four states had rates below 20% and Mississippi led the country at 19.4%.⁵² In 2001, no state had an obesity rate above 24 percent, and now 43 states have higher obesity rates than the state that was the highest in 2000.”⁵³ Over the past 15 years, diabetes rates, closely linked with weight gain and obesity, have increased. “Now, 42 states and Washington D.C. have diabetes rates over seven percent and 31 states and Washington D.C. have rates above eight percent.”⁵⁴

The Obamas: Federal Involvement and the Let's Move! Program

Despite the lack of federal initiative seen by the Bush and Clinton years, the federal government has recently taken some steps to try and reduce this oversized problem, led by the executive branch. After Barack Obama's presidential victory in 2008, the federal government pulled from its resources and launched an “offensive” against the epidemic focusing primarily on children. President Obama created the Childhood Obesity Task Force, which, in May of 2010 unveiled its action plan to “solve the problem of childhood obesity within a generation.”⁵⁵ The taskforce set out plans to work with Health and Human Services (HHS), the United States Department of Agriculture (USDA), the

⁵¹ *F as in Fat: How Obesity Policies Are Failing in America 2008*. Rep. [Healthamericans.org](http://healthamericans.org). Robert Wood Johnson Foundation. Web. 22 Apr. 2012. <<http://healthyamericans.org/reports/obesity2008/Obesity2008Report.pdf>>. Pg. 7

⁵² Jeffrey Levi. *F as in Fat: How Obesity Threatens America's Future 2011*. Pg. 6

⁵³ *Ibid*. Pg. 6

⁵⁴ *Ibid*. Pg. 6

⁵⁵ <http://www.whitehouse.gov/the-press-office/childhood-obesity-task-force-unveils-action-plan-solving-problem-childhood-obesity->

Federal Trade Commission (FTC), the Treasury, Department of Transportation (DOT), Environmental Protection Agency (EPA), Department of Education, and the *Let's Move!* initiative launched by First Lady Michelle Obama. The HHS will release new guidance standards for physical activity and nutrition in child care settings, and to help consumers make informed choices in restaurants, grocery stores, etc. by creating a standard and clearly visible food nutrition label. The USDA updated the Dietary Guidelines and Food Pyramid by creating My Plate and will work with Congress to pass a child nutrition reauthorization bill that improves food in schools. The FTC will continue to monitor how food is marketed to children updating its 2008 report on industry practices. The USDA, Treasury, and HHS will work with Congress to reduce the number of food deserts by bringing healthier foods to grocery stores and constructing more healthy food retailers in a Healthy Food Financing Initiative. The DOT and EPA is promoting healthy modes of transportation such as walking and biking and issued a best practices guide from the DOT-funded National Center for Safe Routes to School. The Department of Education and HHS will provide grants and funding to local communities and schools to support obesity prevention and screening services.

When Barack Obama assumed the presidency, his wife and First Lady, Michelle Obama took the charge to change the American lifestyle by increasing physical activity and improve eating habits. On February 9, 2010, Michelle Obama announced the *Let's Move!* campaign and initiative “dedicated to solving the challenge of childhood obesity within a generation, so that children born today will grow up healthier and able to pursue

their dreams.”⁵⁶ *Let’s Move!* attempts to change the culture of immobility and malnutrition through a series of programs and partnerships with private entities focusing on moving and healthy eating. This campaign prompted President Obama to establish the first-ever Task Force on Childhood Obesity “to develop a coordinated Federal response while also identifying nongovernmental actions that can be taken to solve the problem of childhood obesity within a generation.”⁵⁷ However, the task force serves only as an advisory entity and cannot enforce or create policy.

And the *Let’s Move* initiative has been very successful in pushing forward legislation, federal initiatives, and working with private companies. Yet these achievements have all come on the nutrition side and not the physical education and physical activity half of the equation. In late June of 2011, *Health Affairs Blog* examined Mrs. Obama’s progress noting her impressive feats: Getting a public commitment from the Healthy Weight Commitment Foundation – a coalition of major food manufacturers including Campbell Soup, Coca-Cola, General Mills, Kellogg, Kraft Foods, and Pepsi Co which, together, supply over 20 percent of the food consumed in the U.S. – to eliminate 1 trillion calories from their products by 2012 and 1.5 trillion by the end of 2015;⁵⁸ brought professional chefs into schools to work with administrators and families to make healthy lunches and eating habits;⁵⁹ “the Department of Agriculture initiated an online competition challenging game designers to create online tools and games for kids that

⁵⁶ “Let’s Move!” *Learn The Facts*. Web. 22 Apr. 2012. <<http://www.letsmove.gov/learn-facts/epidemic-childhood-obesity>>.

⁵⁷ The White House. The Executiv. *Presidential Memorandum - Establishing a Task Force on Childhood Obesity*. *Whitehouse.gov*. 9 Feb. 2010. Web. 22 Apr. 2012. <<http://www.whitehouse.gov/the-press-office/presidential-memorandum-establishing-a-task-force-childhood-obesity>>.

⁵⁸ Jane Black. “Michelle Obama Applauds Food Industry Group’s Pledge to Trim Calories.” *Washingtonpost.com*. The Washington Post Company, 18 May 2010. Web. 22 Apr. 2012. <<http://www.washingtonpost.com/wp-dyn/content/article/2010/05/17/AR2010051703895.html>>.

⁵⁹ *Ibid.*

promote healthy foods and active lifestyles;”⁶⁰ Congress passed the Healthy, Hunger-Free Kids Act which, according to *Health Affairs Blog* “aimed to ensure food sold in schools met more rigorous nutritional guidelines, to increase the amount of money schools could be reimbursed for meals, and to expand the number of low-income students eligible for free and reduced-priced school lunches.”⁶¹ The *Let’s Move!* initiative has made huge strides and helped create a culture of healthy living.

However, this success would not have happened without the support of the federal government in passing a landmark federal law, at least according to the First Lady. The *New York Times* reported that Mrs. Obama, in a speech at an elementary school in Louisiana, went so far as to say that “[i]t’s important to be clear...that we can’t do any of this unless we pass the Child Nutrition legislation that’s before Congress right now.”⁶² Mrs. Obama was referring, when she said “this,” to the aim of the *Let’s Move!* initiative – to improve the health of the country through increased physical activity and healthy eating habits. In an op-ed in the *Washington Post*, Mrs. Obama declared that “[w]e owe it to the children who aren’t reaching their potential because they’re not getting the nutrition they need during the day. We owe it to the parents who are working to keep their families healthy and looking for a little support along the way. We owe it to the schools that are trying to make progress but don’t have the resources they need. And we

⁶⁰ “Michelle Obama’s ‘Let’s Move’ Is Losing Its Footing.” Web log post. *Health Affairs Blog*. Project HOPE, 28 June 2011. Web. 22 Apr. 2012.

⁶¹ *Ibid.*

⁶² Campbell Robertson. “First Lady Asks Congress to Join Childhood Obesity Fight.” *NYTimes.com*. The New York Times Company, 8 Sept. 2010. Web. 22 Apr. 2012. <http://www.nytimes.com/2010/09/09/us/politics/09michelle.html?_r=1>.

owe it to our country – because our prosperity depends on the health and vitality of the next generation.”⁶³

Mrs. Obama’s statements ring true. But this support and advocacy is not seen for physical education and physical activity. Schools do not have the resources they need to teach the class and sustain a program so that kids can be physical active themselves. In 2001, the PEP Act declared that “[e]very student in our nation's schools, from kindergarten through grade 12, should have the opportunity to participate in quality physical education. It is the unique role of quality physical education programs to develop the health-related fitness, physical competence and cognitive understanding about physical activity for all students so that students can adopt healthy and physically active lifestyles.”⁶⁴ Aubrey Borland writing in *Melpomene Journal* in the Fall-Winter 2002 issue, that

This statement from the Physical Education for Progress Act of 2001 (PEP) appears to be a clear vote of support by the federal government for school-based physical education. One might then question why the majority of our nation's kids seem to be suffering from a significant lack of physical activity or health education. According to the National Association for Sport and Physical Activity (NASPE), 10-15 percent of children and teens are overweight, and fewer than one in four children get 20 minutes of physical activity three or more times per week. (2) One answer is, although the federal government has been encouraging states to adopt physical education standards for at least 15 years, no federal law actually exists to require state education boards to follow through on these guidelines. States may set broad guidelines, but the decision as to where, when and how much is left up to school districts and individual schools.⁶⁵

⁶³ "A Food Bill We Need." *Washingtonpost.com*. The Washington Post Company, 2 Aug. 2010. Web. 22 Apr. 2012. <<http://www.washingtonpost.com/wp-dyn/content/article/2010/08/01/AR2010080103291.html>>.

⁶⁴ Physical Education for Progress Act, United States Code § 20-8001. Web. 22 Apr. 2012. <<http://www.pecentral.org/professional/pepbill/pepbillpassed.html>>

⁶⁵ Borland, Aubrey. "The Nation's Physical Education Landscape: A Survey of Facts and Figures." *CBS Interactive*. CBS Interactive Business Network, 01 Aug. 2003. Web. 22 Apr. 2012. <http://findarticles.com/p/articles/mi_m0LJP/is_3_21/ai_94771942/>.

Ten years later, not much has changed. Where are the calls from *Let's Move!* pressuring congress to pass a federal law mandating physical education in schools and for congress to grant schools the needed resources and funding to support such programs?

Clearly, the current physical education system is not working. The question remains: what can, and should, be done to get physical education back on track and the people living out a healthy lifestyle? The federal government has provided a grant, minimal in its scope and small in its coverage of the numerous school districts rendering it, on a national scale, largely ineffective. The states have had a decade to try and figure out the puzzle. Some, such as New York and South Carolina, have tried by increasing requirements and standards. A few even checked to determine whether or not their schools were able to follow these laws. However, ultimately, no state has forced its schools to comply. Excuses, such as lack of funding, training, and resources abound. States have done little to remedy what seems clearly to be a failed attempt, other than stating that it did not work. In any other subject, this approach would be unacceptable.

When the federal government realized that students across the nation scored lower than their peers around the globe in math, reading, and science, they held states accountable. They passed the NCLB Act and forced states and school districts to raise standards or suffer the consequences, which have been very real. NCLB immediately sparks a debate among its supporters and detractors. It is very difficult to tell if the policy is succeeding in raising scores and knowledge.

One thing that is clear, a large majority of people believe that some form of national standards is needed. On June 2, 2010, standards for math and English language arts were released as part of the Common Core State Standards Initiative. As of March

21, 2012, the *Columbia Daily Tribune* wrote that “45 states are adopting the same standards” leaving only five states (Alaska, Minnesota, Nebraska, Texas, and Virginia) which have abstained from adopting the new standards.⁶⁶

So far, leaving physical education to the states resulted in an overweight, relatively sedentary, and unhealthy nation. Of the physical activity and physical education programs that exist, almost all fail to meet CDC and NASPE recommendations for healthy and fit children. The current trend sees little improvement in physical education programs, primarily due to funding problems and a lack of accountability from states and their executive agencies. This has some advocates suggesting the nation take a similar approach to physical education as we took for math, science, and English: set federal standards, provide funding, and keep states and school districts accountable. But if this is what organizations such as NASPE, AAHPERD, physical education advocates, health experts, etc. are calling for, what is preventing Congress from passing such a law?

⁶⁶ Martin, Catherine. "Schools Ready to Adopt New Curriculum Standards." *Columbiatribune.com*. Columbia Daily Tribune, 21 Mar. 2012. Web. 22 Apr. 2012. <<http://www.columbiatribune.com/news/2012/mar/21/schools-ready-to-adopt-new-curriculum-standards/>>.

4. Is Federal Involvement in Physical Education Constitutional?

Despite the need for federal legislation and increased support for physical education, none to current date has passed Congress. As a result, it would be very difficult to try and predict whether or not such a law would be constitutional even if it did, hypothetically, pass through Congress and become a law. However, creating federal physical education standards would be very similar to creating federal standards in any other subject of education which, luckily, has been done many times. As a result, we can examine the constitutionality of physical education through the constitutional tests set out for education regulation.

Many argue that even if a federal standards bill on physical education, or any other subject, reached the President's desk, it would be unconstitutional. According to the argument, the Constitution prohibits federal education regulation – and therefore setting national standards or a national curriculum – from the federal level. They believe that physical education is a local matter left to the states. Their argument relies on the 10th Amendment, “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”¹ Because education is not explicitly mentioned in the Constitution, following this line of argumentation, the power to regulate it is not delegated to the federal government, or “the United States,” but therefore must be reserved to the states.

This view is typically held by members of the conservative-right who believes that the Constitution calls for a small federal government. They are often referred to as strict constructionist because of their close and explicit reading of the Constitution which

¹ “The Constitution of the United States,” Amendment 10

requires the text to be taken literally, and explicitly. One such group, The Reason Foundation, a conservative think-tank which published the article, “The Constitution Left Behind” by Andrew Coulson, argued that “The 2002 No Child Left Behind Act,” which regulated and standardized curriculum and testing of math and language arts classes in schools that received federal funding, “...transgresse[d] limits on federal power enshrined in the Constitution...”² David Boaz of The Cato Institute, another conservative think-tank, wrote that “the Constitution [is] silent on the subject of education...[because] [t]he Founders feared the concentration of power. They believed that the best way to protect individual freedom and civil society was to limit and divide power. They believed that the best way to protect individual freedom and civil society was to limit and divide power. Thus it was much better to have decisions made independently by...states than to have one decision made for the entire country.”³ Many have cited this argument as the reason No Child Left Behind failed to deliver its promise to substantially improve math, science, and language arts scores.

The Supreme Court’s Jurisprudence on Education

Regardless of whether or not NCLB failed or succeeded, the Supreme Court and constitutional scholars have found that the issue of education and the 10th Amendment is more complex than strict constructionists argue. In some ways, the strict constructionist is correct: the Constitution does not include education and therefore the federal government, almost certainly, could not mandate schools and states follow certain regulations as this

² Andrew Coulson. "The Constitution Left Behind." *Reason Foundation: Free Minds and Free Markets*. The Reason Foundation, 13 Dec. 2007. Web. 23 Apr. 2012. <<http://reason.org/news/show/the-constitution-left-behind>>.

³ David Boaz. "Remember the Constitution?" *The Cato Institute: Individual Liberty, Free Markets, and Peace*. The Cato Institute, 21 July 2006. Web. 23 Apr. 2012. <<http://www.cato.org/research/articles/cpr28n4-2.html>>.

express power is left to the states. But there is another way for the federal government to regulate education: the Taxing and Spending Clause, or Article I, Section 8, Clause 1. This clause, which is also made up of the General Welfare Clause and the Uniformity Clause, gives the federal government the power of taxation: “The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises to pay the Debts and provide for the common Defense [*ibid*] and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States...”⁴ Under this clause, the Supreme Court has found that, although education is not considered a “right” guaranteed by the Constitution, it can be regulated by the federal government if states have the choice to opt-into a contract that accepts funding in place of regulation.

When issues of education were brought to the Supreme Court, the court ruled on the basis of the 10th Amendment granting the power to regulate education to the states. On May 17, 1954, the Supreme Court of the United States handed down their unanimous, 9-0, decision in *Brown v. Board of Education*. The case was originally brought as a challenge to the racial separation allowed by the Supreme Court from their decision almost 60 years earlier in *Plessy v. Ferguson*, which cemented the legal foundation of “separate but equal” accommodations for whites and blacks, in public schools. In a landmark decision, the Supreme Court “conclude[ed] that in the field of public education the doctrine of ‘separate but equal’ has no place.”⁵ In the Court’s reflection of the purpose and place of education in society, they wrote that “education is perhaps the most

⁴ U.S. Const. Art. 1, § 8, Cl. 1

⁵ *Brown v. Board of Education*, 347 U.S. 483 (1954). Web. 4/22/2012.
<<http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=347&invol=483>>

important function of state and local governments.”⁶ The Supreme Court recognized that education belonged to the states.

Just under 20 years after *Brown v. Board Education*, in *San Antonio Independent School District v. Rodriguez*, the court emphatically declared that education lay in the sphere of state influence: “the Texas school financing system [does not] impermissibly interfere with the exercise of a ‘fundamental’ right or liberty. Though education is one of the most important services performed by the State, it is not within the limited category of rights recognized by this Court as a guaranteed by the Constitution.”⁷ Ann McColl, former professor at University of North Carolina in Charlotte, explained in her article “Tough Call: Is No Child Left behind Constitutional?” that the Court found “that the Constitution does not establish, either explicitly or implicitly, education as a right or delegate the authority over schools to the federal government. Instead, education is within the domain of state and local governments.”⁸

However, federal involvement in public education began almost 100 years earlier than *Brown v. Board of Education* with the creation of the Department of Education in 1867 which, according to the U.S. Department of Education’s website, “collected information on schools and teaching that would help the States establish effective school systems.”⁹ In 1890, 1917, and 1946, Congress passed the Second Morrill Act, the Smith-Hughes Act, and the George-Barden Act, all of which expanded the department’s

⁶ *Ibid*

⁷ *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1 (1973). Web. 4/22/2012. <<http://supreme.justia.com/cases/federal/us/411/1/case.html>>

⁸ Ann McColl. "Tough Call: Is No Child Left behind Constitutional?" *Phi Delta Kappa International* 86.8 (2005): 604-10. Print. Pg. 605

⁹ United States. Department of Education. *The Federal Role in Education*. Ed.gov, 13 Feb. 2012. Web. 22 Apr. 2012. <<http://www2.ed.gov/about/overview/fed/role.html>>.

purviews to include land grants, federal aid, and “agricultural, industrial, and home economics training for high school students.”¹⁰

In 1958, after the Soviet Union launched the first successful satellite, Sputnik, into orbit, fear spread throughout the United States that the country had fallen severely behind in math and the sciences. As a result, President Eisenhower successfully passed the National Defense Education Act (NDEA) which “ensure[d] that highly trained individuals would be available to help America compete with the Soviet Union in scientific and technical fields, the NDEA included support for loans to college students, the improvement of science, mathematics, and foreign language instruction in elementary and secondary schools, graduate fellowships, foreign language and area studies, and vocational-technical training.”¹¹ Lyndon Johnson pushed through the Elementary and Secondary Education Act (ESEA) in 1965 which granted funding to schools in an attempt to raise standards by providing the support needed.

These pieces of education policy were passed before *San Antonio v. Rodriguez*, yet it seems that the constitutionality of these acts was never challenged. This is most likely because neither act created subject-wide standards. Instead, ESEA provided funding for schools with students from low-income families and NDEA gave federal grants, aid, and loans to engineering and foreign language students as well as study centers. Neither standards nor curriculum were set by the federal government.

Still, the federal government was providing money to schools and this invited the federal government to regulate it. As Congress increased its spending, it branched out to other powers not explicitly named in the Constitution. In order to combat this possible

¹⁰ *Ibid*

¹¹ *Ibid*

breach of the constitution, Congress' regulation rested more and more on the Taxing and Spending power of the Constitution. Today, this clause is interpreted to allow the federal government to enter into a contract, of a sort, with individual states. Still, it is questionable if the founders originally intended for such use of this clause.

Madison v. Hamilton: The Powers of the Federal Government

James Madison, writing under the pen name "Publius" in Federalist 41 and urging for the ratification of the Constitution, explained his interpretation of the Taxing and Spending power granted to the federal government. Madison tried to expel his fellow colonists' fears of the Taxing and Spending, and General Welfare, clauses:

Some who have not denied the necessity of the power of taxation, have grounded a very fierce attack against the Constitution, on the language in which it is defined. It has been urged and echoed, that the power 'to lay and collect taxes, duties, imposts, and excises, to pay the debts, and provide for the common defense and general welfare of the United States,' amounts to an unlimited commission to exercise every power which may be alleged to be necessary for the common defense or general welfare. No stronger proof could be given of the distress under which these writers labor for objections, than their stooping to such a misconstruction.¹²

To Madison, Congress was allowed to tax and spend only from the list enumerated

immediately succeeding the Spending and Taxing clause the rest of Article I, Section 8.

For what purpose could the enumeration of particular powers be inserted, if these and all others were meant to be included in the preceding general power? Nothing is more natural nor common than first to use a general phrase, and then to explain and qualify it by a recital of particulars. But the idea of an enumeration of particulars which neither explain nor qualify the general meaning, and can have no other effect than to confound and mislead, is an absurdity, which, as we are reduced to the dilemma of charging either on the authors of the objection or on the authors of the Constitution, we must take the liberty of supposing, had not its origin with the latter.¹³

¹² James Madison. "Federalist No. 41: General View of the Powers Conferred by The Constitution." Editorial. *The Independent Journal* [New York] 19 Jan. 1788. *FoundingFathers.info*. Web. 22 Apr. 2012. <<http://www.foundingfathers.info/federalistpapers/fed41.htm>>.

¹³ *Ibid*

Madison argued that such powers would not have been enumerated without reason.

Therefore, the powers enumerated must be the only powers delegated regarding taxing and spending. Otherwise, Madison believed, the authors of the Constitution would not have created a list as it would be pointless to enumerate an infinite, or list an incomplete set of powers leaving the rest to wonder and interpretation.

In March of 1817, as President of the United States, Madison vetoed a bill which provided funds ““for constructing roads and canals and improving the navigation of water courses, in order to facilitate, promote, and give security to internal commerce among the several States, and to render more easy and less expensive the means and provisions for the common defense.”¹⁴ For Madison, this bill abridged “[t]he legislative powers vested in Congress...specified and enumerated in the eight section of the first article of the Constitution, and it does not appear that the power proposed to be exercised by the bill is among the enumerated powers, or that it falls by any just interpretation with the power to make laws necessary and proper for carrying into execution those or other powers vested by the Constitution of the United States.”¹⁵

Madison declared that he understood the importance of roads, canals, improved navigation of water courses, etc., and refused to accept the idea that such a bill could pass via the Interstate Commerce Clause, Article I, Section 8, Clause 3, which was a taxing and spending power enumerated in the clause. “If a general power to construct roads and canals, and to improve the navigation of water courses, with the train of powers incident thereto, be not possessed by Congress, the assent of the States in the mode provided in

¹⁴ United States. The White House. *Veto of Federal Public Works Bill*. By James Madison. *The Constitution Society*. Web. 23 Apr. 2012. <http://constitution.org/jm/18170303_veto.htm>.

¹⁵ *Ibid*

the bill can not [*ibid*] confer the power. The only cases in which the consent and cession of particular States can extend the power of Congress are those specified and provided for in the Constitution.”¹⁶ Because building roads, canals, etc. was not listed in the Constitution, Madison declared that such a power could not be interpreted by Congress but must be left to the states.

For Madison, any power would have to be “expressly given by the Constitution” and could not be interpreted. If Madison’s reading of the Constitution was adopted, the federal government would not be able to pass any legislation regarding education, including providing funding. As education is not listed in the Constitution, it must follow the 10th Amendment which granted powers not listed in the Constitution reserved to the states. Thus, any bill regarding education, which includes physical education, would be unconstitutional.

However, Alexander Hamilton, writing in 1791, vehemently disagreed with Madison. In writing “The Report on Manufactures,” the third report from the then-U.S. Treasury Secretary, Hamilton purported that the federal government could, and should, foster economic growth through financial support in the country on the grounds of the General Welfare clause.

In Hamilton’s interpretation of the Constitution, Congress could raise taxes and spend as long as it did not violate the three restrictions listed in the clause:

The National Legislature has express authority “To lay and Collect taxes, duties, imposts and excises, to pay the debts and provide for the *Common defense* [*ibid*] and *general welfare* [*ibid*]” with no other qualifications than that “all duties, imposts and excises, shall be *uniform* [*ibid*] throughout the United states,[”] that no capitation or other direct tax shall be laid unless in proportion to numbers ascertained by a census or enumeration taken on

¹⁶ *Ibid*

the principles prescribed in the Constitution, and that “no tax or duty shall be laid on articles exported from any state.” These three qualifications excepted, the power to raise money is plenary, and indefinite; and the objects to which it may be appropriated are no less comprehensive, than the payment of the public debts and the providing for the common defence and ‘general Welfare.’”

Just as Madison lamented the enumeration of powers, Hamilton expounded on the purposeful ambiguity of the term “General Welfare.” For Hamilton, the three restrictions would not have been placed before the term, and before the enumerated powers, if they were not to be the only restrictions.

The terms “[G]eneral Welfare” were doubtless intended to signify more than was expressed or imported in those which Preceded; otherwise numerous exigencies incident to the affairs of a Nation would have been left without a provision. The phrase is as comprehensive as any that could have been used; because it was not fit that the constitutional authority of the Union, to appropriate its revenues shou[l]d have been restricted within narrower limits than the “General Welfare” and because this necessarily embraces a vast variety of particulars, which are susceptible neither of specification nor of definition.

Hamilton argued that such a power could not be defined nor enumerated and was instead, “left to the discretion of the National Legislature, to pronounce, upon the objects, which concern the General Welfare, and for which...an appropriation of money is requisite and proper.”¹⁷ Thus, Hamilton believed that anything, barring the three restrictions, Congress deemed necessary for the Common Defense or General Welfare could be supported through federal taxes and spending. While Madison believed that the clause enumerated, and thus limited, federal powers leaving the rest to the states, Hamilton argued that the clause enumerated restrictions, thus enlarging federal power.

¹⁷ Alexander Hamilton. “Report on Manufacturers.” 5 Dec.1791. Volume 2, Article 1, Section 8, Clause 1, Document 21. The University of Chicago Press. Web. 4/22/2012. <http://press-pubs.uchicago.edu/founders/documents/a1_8_1s21.html>.

The Taxing and Spending Clause

Although federalism had been a conflict with deep history in the courts, on the congressional floor, and between state legislatures and the executive branch, the Spending Power came to the forefront of the court much later. In 1936, the Court heard *U.S. v. Butler* (1936) which began the expanse of the Court's interpretation on the Taxing and Spending clause, closer towards Hamilton and further from Madison.

In 1933, to combat the Great Depression, Congress passed the Agricultural Adjustment Act (AAA). The goal of AAA was to restrict crop production in order to reduce surpluses and raise the prices of agriculture products. In order to achieve this, the act paid farmers a subsidy not to plant on part of their land. The money for this subsidy was raised by taxing companies which processed farm products which was then distributed by a new agency called the Agricultural Adjustment Administration, which was created by the act. The question posed was whether the federal government had the power to regulate the agriculture industry by taxing them since this was not a power listed in the Taxing and Spending Clause.

The Court harkened back to James Madison and ruled that the federal government's jurisdiction did not extend to agricultural production, deeming the act unconstitutional and striking down AAA. Justice Owen Roberts, writing for the Court explained that "[t]he act invades the reserved rights of the states. It is a statutory plan to regulate and control agricultural production, a matter beyond the powers delegated to the federal government. The tax, the appropriation of the funds raised, and the direction for their disbursement, are but parts of the plan. They are but means to an unconstitutional

end.”¹⁸ Roberts argued that because the federal government was created as a “government of delegated powers, it follows that those not expressly granted, or the reasonably to be implied from such as are conferred, are reserved to the states or to the people.” Because agricultural production was not a power granted, “legislation by Congress for that purpose [must be] forbidden.”¹⁹

The Court also conceded some of Hamilton’s argument leading to a slippery-slope argument that it seemingly refused to answer. Roberts wrote that, following Hamilton’s argumentation, “the clause...is not restricted in meaning...and Congress consequently has a substantive power to tax and to appropriate, limited only by the requirement that it shall be exercised to provide for the general welfare of the United States.”²⁰ Weighing the two options, Roberts concluded that “[w]hile, therefore, the power to tax is not unlimited, its confines are set in the clause which confers it, and not in those of § 8 which bestow and define the legislative powers of the Congress. It results that the power of Congress to authorize expenditure of public moneys for public purposes is not limited by the direct grants of legislative power found in the Constitution.”²¹

In order to decide what those confines are, the Court would need to decide the meaning of “general welfare” instead of defining it by the limitations set by Section 8. But the Court was not ready to pronounce such an expansive view constitutional and instead decided that they “are not now required to ascertain the scope of the phrase ‘general welfare of the United States’ or to determine whether an appropriation in aid of

¹⁸ *United States v. Butler et al., Receivers of Hoosac Mills Corporation*, 297 U.S. 1 (1936). Web. 4/22/2012.
<http://scholar.google.com/scholar_case?case=1427345954995665703&hl=en&as_sdt=2&as_vis=1&oi=scholar>

¹⁹ *Ibid*

²⁰ *Ibid*

²¹ *Ibid*

agriculture falls within it.” Their only condition was to limit the federal government’s provisions to “extend only to matters of national, as distinguished from local, welfare.”²² As a result, the Court could not rule based on the Taxing and Spending Power but instead on strict 10th Amendment grounds granting the domain to the states. Still, the new interpretation of the Taxing and Spending Clause increased in scope which paved the way for the next Spending Clause case.

Just over one year later, in May of 1937, the Court handed down its decision to uphold an unemployment compensation provision of the Social Security Act of 1935 in *Steward Machine Co. v. Davis*. If states did not establish an approved unemployment compensation plan, then the federal government would fully tax employers according to the 1935 act. However, such a plan would allow for up to a 90% credit on the federal tax paid to the state unemployment fund. The pursuant claimed that such a taxing provision coerced states to adopt the compensation plans. The court was closely split, voting 5-4 to uphold the law arguing that Congress could enter into agreements with states as long as the agreement did not coerce the states so as to destroy or impair their autonomy.

The question the court wished to address was whether or not the states were coerced into entering into the contract. Cardozo, writing for the majority, explained,

[E]very [*ibid*] rebate from a tax when conditioned upon conduct is in some measure a temptation. But to hold that motive or temptation is equivalent to coercion is to plunge the law in endless difficulties. The outcome of such a doctrine is the acceptance of a philosophical determinism by which choice becomes impossible. Till now the law has been guided by a robust common sense which assumes the freedom of the will as a working hypothesis in the solution of its problems.²³

²² *Ibid*

²³ *South Dakota v. Dole, Secretary of Transportation*, 483 U.S. 203 (1987). Web. 4/22/2012. <http://scholar.google.com/scholar_case?case=3920177871531443576&hl=en&as_sdt=2&as_vis=1&oi=scholarr>

Alabama, the state from which Steward Company was suing, had enacted the plan when its agents enacted it. Because the plan was not forced upon the state, Cardozo argued that it “would be a strange irony, indeed, if her choice were now to be annulled on the basis of an assumed duress in the enactment of a statute which her courts have accepted as a true expression of her will.”²⁴

Only one year after refusing to determine and define the meaning of the general welfare clause, the Court examined the case on those grounds but stopped well-short of providing a definition. Cardozo, looking back a few years to the results of the Great Depression stated that the states were not equipped to provide the aid and services to such a large number of unemployed persons. As a result, Cardozo explained, “[t]he problem had become national in area and dimensions. There was need of help from the nation if the people were not to starve.”²⁵ Thus if the size and scope is large enough to necessitate federal aid, and the provision attempted to relieve citizens’ burdens, the general welfare clause would be satisfied.

Almost four decades later, the Taxing and Spending clause resurfaced when Congress enacted the Airport and Airway Revenue Act of 1970 which imposed a flat rate registration tax on all civil aircrafts, including those owned by the state and federal government, which fly in US airspace. The act also taxed aircraft fuel, tires, and tubes but States were exempted from these taxes. The taxes were used to fund the national airsystem which provided the infrastructure that supported the safe air-travel of all aircraft. After having to pay the registration tax on a helicopter used almost exclusively

²⁴ *Steward Machine Co. v. Davis, Collector of Internal Revenue*, 301 U.S. 548 (1937)
<http://scholar.google.com/scholar_case?case=11777818167992631527&hl=en&as_sdt=2&as_vis=1&oi=scholar>

²⁵ *Ibid*

for police work, Massachusetts filed suit complaining that the tax prevented the state from traditional and essential police force operation. However, the Supreme Court, as did all of the lower courts, sided with the federal government upholding the 1970 act by a 6-2 vote.

The Court looked primarily to see if the taxes, and exemptions, were constitutional according to the taxing and spending clause. Justice Robert Brennan delivering the opinion of the Court, found the challenge to the constitutionality weak, writing that “since the Constitution explicitly requires States to bear similar economic burdens when engaged in essential operations... (even when burdensome, a State often must comply with the obligations of its contracts), it cannot be seriously contended that federal exactions from the States of their fair share of the cost of specific benefits they receive from federal programs offend the constitutional scheme.”²⁶

Even disregarding the fact that Massachusetts complained about paying for a small amount of the federal airways services that it already uses, Brennan emphasized “that the Federal Government may impose appropriate conditions on the use of federal property or privileges and may require that state instrumentalities comply with conditions that are reasonably related to the federal interest in particular national projects or programs.”²⁷ Because the tax of the aircraft is closely related to the spending of that money, Congress acted within its Constitutional powers to raise and spend funds on its federal airways. Brennan distinguished between the taxation that destroys and prohibits commercial activity, and the taxation that takes from users of a system to pay for and

²⁶ *Massachusetts v. United States*, 435 U.S. 444 (1978). Web. 4/22/2012.
<http://scholar.google.com/scholar_case?case=16842193024599209893&hl=en&as_sdt=2&as_vis=1&oi=scholar>

²⁷ *Ibid*

support that system. Thus, the taxing and spending clause gained a condition: the taxing and the spending must be related to the federal interest.

In 1981, in the case *Pennhurst State School and Hospital v. Halderman*, the court examined whether or not the Developmentally Disabled Assistance and Bill of Rights Act of 1975, which was passed in order “[t]o assist [the] states to assure that persons with developmental disabilities receive the care, treatment, and other services necessary to enable them to achieve their maximum potential through a system which coordinates, monitors, plans, and evaluates those services and which ensures the protection of the legal and human rights of persons with developmental disabilities,” could create rights that “were judicially enforceable, and that conditions at the Pennhurst State School and Hospital (Pennhurst), a facility for the care and treatment of the mentally retarded, violated those rights.”²⁸ The act was a “federal-state grant program whereby the Federal Government provides financial assistance to participating States to aid them in creating programs to care for and treat the developmentally disabled. Like other federal-state cooperative programs, the Act is voluntary and the States are given the choice of complying with the conditions set forth in the Act or forgoing the benefits of federal funding.”²⁹

In the Supreme Court hearing, the Solicitor General conceded that the act stood according to the spending power alone, and not by the 14th Amendment which guaranteed equal treatment for all people, in this case, an assurance for equal treatment of mentally

²⁸ *Pennhurst State School and Hospital Et Al. v. Halderman Et Al.*, 451 U.S. 1 (1981). Web. 4/22/2012
<http://scholar.google.com/scholar_case?case=13878865053463720829&hl=en&as_sdt=2&as_vis=1&oi=scholar>

²⁹ *Ibid*

retarded persons. The state of Pennsylvania, in which Pennhurst was situated, had accepted the federal conditions in exchange for the grant money. Although the court had recognized, in numerous previous cases that, “Congress’ power to legislate pursuant to the spending power, Congress may fix the terms on which it shall disburse federal money to the States,”³⁰ In its regulations, Congress imposed affirmative obligations upon states and institutions.

The court ruled that the act’s regulations, and from where moneys to fund such regulations would come, were ambiguous. Just like any contract, “[t]here can, of course, be no knowing acceptance if a State is unaware of the conditions or is unable to ascertain what is expected of it. Accordingly, if Congress intends to impose a condition on the grant of federal moneys, it must do so unambiguously.”³¹ When states sign a contract, they make a choice based on the terms, but Congress must speak them with “a clear voice, [which]...enables the States to exercise their choice knowingly, cognizant of the consequences of their participation.”³² As McColl states, “[t]his conforms to the understanding that most people have of what makes a contract valid.”³³

The court ruled in favor of Pennhurst, 6-3, concluding its decision by stating that although Congress’ intentions to improve the treatment and perception of the mentally retarded was desirable, the Act “required the States, at their own expense, ...provide certain kinds of treatment,”³⁴ which was contrary to the Court’s opinion of the Taxing

³⁰ *Ibid*

³¹ *Ibid*

³² *Ibid*

³³ Ann McColl. Pg. 605

³⁴ *Pennhurst State School and Hospital Et Al., v. Halderman Et Al.*

and Spending powers of the national legislature and thus unconstitutional. Such a contract must be clear and unambiguous.

Just six years later, the Supreme Court issued another decision on the taxing and spending powers in *South Dakota v. Dole*. Dole was the major summation of the previous taxing and spending powers cases. It organized the rules of constitutionality the Court established through the decades of decisions on the clause.

In 1984, Congress passed the National Minimum Drinking Age Act which, in the hopes of discouraging states from lowering the drinking age, stated that it would withhold 5% of federal highway funding from states that did lower their drinking age. South Dakota already allowed 19-year olds to purchase beer containing up to 3.2% alcohol. It filed suit to challenge the law naming Secretary of Transportation Elizabeth Dole as the defendant. South Dakota sought for the law to be struck down specifically on the basis that Congress had exceeded its spending power. However, the Court ruled 7-2 in favor of Dole, supporting Congress' actions.

The court, in deciding the case, reviewed the conditions it had drawn up to decide constitutionality of Taxing and Spending Powers cases, of which it had created four rules, or restrictions. The first, as decided in *U.S. v. Butler*, "is derived from the language of the Constitution itself: the exercise of the spending power must be in pursuit of the 'general welfare.' ... In considering whether a particular expenditure is intended to serve general public purposes, courts should defer substantially to the judgment of Congress."³⁵ The second condition limited the power of Congress' spending, referencing *Pennhurst State School and Hospital v. Halderman* it wrote that the "conditions "it 'must do so

³⁵ *South Dakota v. Dole, Secretary of Transportation*

unambiguously...[*ibid*], enable[ing] the States to exercise their choice knowingly, cognizant of the consequences of their participation.”³⁶ Thirdly, “conditions on federal grants might be illegitimate if they are unrelated ‘to the federal interest in particular national projects or programs,’” as decided in *Massachusetts v. United States* (1978). And finally, as was the case in *South Dakota v. Dole*, “other constitutional provisions may provide an independent bar to the conditional grant of federal funds.”³⁷

The court defined the “‘independent constitutional bar’ limitation on the spending power” as “the unexceptionable proposition that the power may not be used to induce the States to engage in activities that would themselves be unconstitutional. Thus, for example, a grant of federal funds conditioned on invidiously discriminated state action or the infliction of cruel and unusual punishment would be an illegitimate exercise of the Congress’ broad spending power.”³⁸ The Court ruled that this was not the case.

But, the Court did recognize the possibility that financial incentive and pressures offered by a federal law or grant could coerce states into accepting an undesirable contract as first brought up in *Steward Machine Co. v. Davis*. In *South Dakota v. Dole*, the Court deemed that stripping 5% of federal highway funds were not a large enough temptation to grant that the law coerced states into acting. Additionally, the state could repeal the unemployment law, disbanding the program and return the funds, restoring the previous state drinking age law. As long as states do not surrender their autonomy and

³⁶ *Ibid*

³⁷ *Ibid*

³⁸ *Ibid*

“powers essential to their quasi-sovereign existence,” the court determined, a state would not be considered coerced.³⁹

Thus, the court established five main tenets to determining constitutionality of an act passed on the basis of the Taxing and Spending Clause: The conditions must be unambiguous (also known as the conditional spending power); The conditions must promote the “general welfare” from a national, and not local, level; The conditions must relate “to the federal interest in particular national projects or programs;”⁴⁰ The provisions may not lead anyone, or any organization, to unconstitutional actions, also known as, an independent constitutional bar; And lastly, states cannot be coerced into accepting the terms of the contract but must be able to enter and exit the contract willingly of their own accord.

Over the years, the Supreme Court’s views on the Taxing and Spending Clause expanded. Originally, the Court ruled from a very literal reading of the Constitution, as expounded by James Madison, which led to a small federal government. However, this grew into a broad interpretation, as argued by Alexander Hamilton, which allowed the federal government to regulate more freely and be larger in scope. As a result, powers not explicitly granted in the Constitution could be regulated by the federal government, under the restrictions listed above.

Since *U.S. v. Butler*, the Court has struck down only three other conditional spending power cases brought before it. In 1992, the Court, in a six-member majority, struck down the “Take Title” provision of the Low-Level Radioactive Waste Policy Amendments Act of 1985 in the case *New York v. United States*. In 1995, the justices

³⁹ *Steward Machine Co. v. Davis, Collector of Internal Revenue*.

⁴⁰ *Massachusetts v. United States*.

struck down the Gun Free School Zones Act of 1990 in their 5-4 ruling of *United States v. Lopez* and in 1997, the Court, also in a 5-4 decision, deemed the Brady Handgun Violence Prevention Act unconstitutional in *Printz v. United States*.

However, in *Lopez*, the court did not rule on the grounds of the Taxing and Spending powers but instead on the Commerce Clause (Article I, Section 8, Clause 3) because, on the advice of then-U.S. Attorney General Janet Reno, Congress added an amendment to the bill specifically citing the Commerce Clause as the constitutional justification for the mandate. Nevertheless, without the amendment, it is highly likely that the act would have also failed under the Spending Clause defense as the Court ruled that the act was too local in nature, violating the condition that Spending Clause acts be national in interest.

In *New York v. United States*, the Justice Sandra Day O'Connor's opinion declared the "Take Title" provision of the Low-Level Radioactive Waste Policy Amendments Act of 1985 unconstitutional. The "Take Title" provision required states, if they failed to comply with the rest of the act, to take responsibility for the waste produced within their borders. Because the act was not set up in the terms of an opt-in contract but as a mandate this requirement was viewed as coercing the states to accept a regulation of a sphere reserved to the states under the 10th Amendment. The "Take Title" provision was struck and the rest of the act, which was deemed constitutional as it dealt with a pressing national problem, was allowed to stand.

Five years after *New York*, in 1997, the Court overturned the Brady Handgun Violence Prevention Act in *Printz v. United States* based on the "historical understanding" of what Justice Antonin Scalia called the "dual sovereignty" established

by the Constitution. The act in question placed local law enforcement under the authority of federal agents in regards to the governing and distribution of firearms. Scalia argued that, by asserting federal control over local law enforcement, the act was coercive because it tried to force the “means and instrumentalities which are the creation of their sovereign and reserved rights.”⁴¹ This removed their means for defense which rendered the states a slave to the federal government without the possibility of opting-out. Because the Constitution did not mention regulation of law enforcement, the power is delegated to the states, under the 10th Amendment, in order to keep the states autonomies.

As stated earlier, the constitutionality of federal education acts hinge on the Taxing and Spending Clause which separates the power of the federal government and the states. This is because education, which is a power not explicitly listed, nor implied, and despite the fact that education is not considered a guaranteed “right” under the Constitution, is not under the powers of the federal government, and therefore the federal government cannot mandate education regulation. However, after almost a century of decisions and interpretation, the Supreme Court created a set of restrictions that allows the federal government to regulate and mandate the education of any state that opts-in to a contract. This means that federal education legislature can be constitutional. Because Physical Education is a part of education, federal legislature can specifically regulate the subject of Physical Education, like math and science, within the limitations of the Constitution.

⁴¹ *Printz, Sheriff/Coroner, Ravalli County, Montana v. United States*, 521 U.S. 898 (1997). Web. 4/22/2012
 <http://scholar.google.com/scholar_case?case=10894716839911389166&q=Printz+v.+United+States&hl=en&as_sdt=2,5&as_vis=1>

5. Proposed Federal Physical Education Legislation and the Fitness

Integrated with Teaching Kids Act (FIT Kids Act)

As this paper has discussed, Physical Education is on the decline in the United States. Across the nation, kids and young adults have become, in increasing numbers, fat, obese, out of shape, and unhealthy. Schools, feeling the pressures from NCLB to focus on math, science, and English, focused school time, funding, and other resources to those three subjects. The recession brought difficult economic times for schools forcing many to cut budgets. Thus, those “non-core” subjects such as physical education and the arts were the first to go. Instead of stepping in to support education, ensuring that arts and physical education programs would not be cut, states have failed to pick up the slack. Just the same, many states lag far behind the CDC and NASPE standards of 150 and 225 minutes of physical education per week. Students perform worse when they do not engage in physical activity and the eventual healthcare and productivity costs also increase. Despite this mountain of evidence, states have failed to provide the necessary support, whether they tried to increase and improve physical education standards and effectiveness, or not. If the nation wants to improve the health of our country, it will invest in physical education.

However, there are numerous solutions and programs that, if implemented, would be effective in helping reduce obesity rates and chronic disease risk factors, and increase academic achievement. Instead of treating physical education as a “secondary” subject, physical education should receive similar time requirements, funding, and instructor

quality, those with the proper professional training and certification, as primary, “core,” subjects. Additionally, every school should have the requisite funding and space to hold classes. This would include ensuring that students attend physical education classes for close to 150 minutes per week, that all teachers are certified by NCATE/NASPE, effective programs can be implemented without a worry of cost, and that the equipment and facilities are adequate and proper.

Recent Federal Attempts to Improve Health and Wellness

In order to achieve these milestones in physical education, funding, legislation and the energy behind the movement is necessary. The United States saw the most improvement in physical activity and physical education when Kennedy injected legitimacy and attention to physical activity and education, however, the energy escaped soon after his assassination. Not surprisingly, the obesity rates began to rise only a few years later when physical activity was no longer at the forefront of national attention.

Barack Obama and his wife, Michelle Obama, are trying to rectify the problem in a Kennedy-like manner through the *Let's Move* campaign. Currently, the foundation has done impressive work on the nutrition side but little to improve and support physical education. Michelle Obama successfully lobbied for improved nutrition in school breakfasts and lunches through the Healthy Hunger-Free Kids Act of 2010 which set standards for all food in schools receiving federal funds.¹ The First Lady also worked out deals with food producers to cut calories and improve nutrition in their products. However, much of the work and accomplishments of the *Let's Move* foundation is on the

¹ Michael Muskal. "Obama Signs Child Nutrition Bill, Championed by the First Lady." *The Los Angeles Times*. The Tribune Company, 13 Dec. 2010. Web. 22 Apr. 2012.
<<http://articles.latimes.com/2010/dec/13/news/la-pn-obamas-food-bill-signing-121310>>.

nutrition side, which is only half of the equation. Although the campaign has partnered with the NHL, the NFL, Disney, and Major League Baseball, the effect has been minimal: the partnerships have signed up over 200,000 kids (out of roughly 55 million elementary and secondary school students) to take the Presidential Active Lifestyle Award – which challenges participants to be active 60 minutes a day, five days a week, for six out of eight weeks of the period – and created Public Service Announcements to encourage Americans to go outside, move around, and consistently stay physically active.² The only concrete achievement in the physical activity realm is a promise from the United States Tennis Association, which promised “to constructing and renovating 3,000 tennis courts across the country in 2011...with all the courts being lined for use in QuickStart Tennis,” a new program for kids to learn to play tennis on a reduced-size court, compressed tennis balls, and smaller racquets.³ These efforts pale in comparison to the work that is needed. While impressive and meaningful, Mrs. Obama and the *Let’s Move* foundation’s work focused on health and nutrition. Both nutrition and physical activity are necessary to get this nation healthy and active again, however, the attention for physical activity has not sufficed.

If the country is serious about creating permanency in its efforts to improve physical activity, the federal government must step in and create permanency in improved standards by supporting states and schools across the nation through increased standards and yearly infusions of money. Because states seem incapable of the necessary

² United States. U.S. Department of Education. National Center for Education Statistics. *Digest of Education Statistics: 2010*. Institute of Education Sciences. Web. 22 Apr. 2012. <<http://nces.ed.gov/programs/digest/d10/>>.

³ Erin Bruehl. "USTA Joins First Lady Michelle Obama to Encourage Children to Be Active." *United States Tennis Association*. Web. 23 Apr. 2012. <http://www.usta.com/usta_joins_first_lady_michelle_obama_to_encourage_children_to_be_active/>.

monetary investment, federal involvement is, at this point in time, a necessity to fixing the unhealthy state of American youth behavior. But, as of now, the Federal Government's reach barely extends to Physical Education. According to the study, *Examination of Trends and Evidence-Based Elements in State Physical Education Legislation; A Content Analysis*, The US Department of Agriculture Child Nutrition and WIC Reauthorization Act of 2004 "requires school districts to create wellness policies. [However,] [s]tates may set some general or minimum requirements for these policies, but individual school districts provide specific direction and may exceed the minimum recommendations."⁴ Additionally, it is unclear, and doubtful, if these standards are actually enforced. Thus, federal support is minimal.

Federal Legislation

But there are many members of Congress who recognize the importance of federal intervention. Since 2002, after the Carol M. White PEP Act Grant was enacted and established, Congressmen introduced 36 bills and resolutions to the floors of the House of Representatives and Senate. Some resolutions calling for the recognition of "National Physical Activity Week," or "Month," did not encounter much resistance in either chamber, however, every bill that could actually introduce change and improvement failed. Only one, the Fitness Integrated with Teaching Kids Act, passed through either chamber as it did in 2010 by a voice vote before dying in the Senate. No other physical education bill, in the past decade, even made it to a vote. Because the FIT Kids Act is the closest bill to becoming a law, which is the bill that deserves the greatest

⁴ Amy Eyler. "Examination of Trends and Evidence-Based Elements in State Physical Education Legislation: A Content Analysis." *Journal of SchoolHealth* 80.7 (2010): 326-32. Web. 22 Apr. 2012. <<http://paprn.wustl.edu/pastprojects/Documents/JOSHart.pdf>>.

attention and scrutiny. However, FIT Kids Act and the other bills are not perfect.

Therefore, it is valuable to understand the other proposed bills and how they will impact physical education programs.

After the passage of the Carol M. White PEP Grant, most of the bills introduced to Congress proposed providing grants to states, education agencies, school districts, etc. to encourage innovation and improvement in physical education programs. Almost all of the bills propose to amend the Elementary and Secondary Education Act of 1965 (ESEA) as it is the main legislation that funds education, following the constitutional guidelines set out in *South Dakota v. Dole*.

In 2002, Michael Castle, then Republican Representative from Delaware, submitted the Obesity Prevention Act to the House of Representatives on October 28, 2002. It was introduced to the floor as H.R. 5659. The bill would amend the National School Lunch Act to direct the Secretary of Education to award grants to state educational agencies that create programs that meet improved nutritional and physical fitness programs. Additional grants would be awarded for pilot projects directed at improving healthy habits such as eating nutritiously and increasing physical activity. A Commission on Obesity Treatment and Prevention would be formed to oversee research, policy formation, and other obesity and physical activity regulation by the federal government. The Secretary of HHS would be required to encourage states to implement programs that would assist obese children or children at risk of becoming obese, which would be matched by the federal government by a grant covering at least 15% of the costs. The Secretary, acting through the Director of the CDC, would award grants for curricula changes directed at decreasing obesity prevalence through early home visitation

programs and healthy nutrition choices and physical activity opportunities in schools. Additionally, the Secretary of HHS, through the Administrator of the Health Resources and Services Administration, would award grants to support training of early childhood professionals about obesity prevention. Lastly, it amends ESEA and includes health and nutrition education programs as local activities under 21st century community learning centers.⁵

The Obesity Prevention Act which was sent to the Subcommittee on Health, did not make it out of the subcommittee and was reintroduced in May of the next year. It was referred to the Subcommittee on Education Reform where it died failing to make it out of subcommittee both years. There were a lot of moving parts to the bill which probably complicated attempts to gain traction to move the bill. It proposed to increase funding, training, and support for physical education, although much of it was geared towards nutrition and healthy habits programs, leaving it a bit ambiguous how much of the funding would actually go to physical education programs. It is unclear how effective this program would be – much of the effectiveness would probably depend on the amount authorized by the appropriations committee for the various grants. The PEP grant provided roughly \$70 million of grant funding a year, inadequate in raising standards and time spent in physical education classes.⁶ Castle, who vacated his seat in an unsuccessful bid in the 2010 Senate special election for Vice President Joe Biden's post, currently is out of a congressional seat.

⁵ Obesity Prevention Act, H.R. 5659, 107th Cong. CRS Summary on Thomas.loc.gov. Web. 4/22/2012.

⁶ United States. Department of Education. *Carol M. White Physical Education Program Funding Status*. Ed.gov, 2 Nov. 2011. Web. 22 Apr. 2012. <<http://www2.ed.gov/programs/whitephysed/funding.html>>.

In 2004, Democrats introduced two bills in the Senate to increase federal support for physical education. The first, S. 2150, introduced on the first of March by Senator Ben Nelson of Florida, was entitled “A bill to promote better health for young people through Federal matching awards for physical education programs of excellence, and for other purposes.” The act sought to amend ESEA of 1965 by directing “the Secretary of Education to provide matching awards to maintain eligible schools’ high quality physical education programs.” The CDC and Dept. of Education would gather data and information on the effectiveness of school-based physical education in promoting health, well-being, and obesity prevention in children. Lastly, the information gathered would also include student participation rates of these physical education programs.

The bill, by itself would not be extremely effective in improving physical education throughout the entire nation, but the data collection would pave the way for future federal action. Still, while it would gather much needed information and data to concretely show that schools are not providing adequate physical education, the funding would be provided only to schools that already have quality physical education programs and most likely, are least in need of money for their physical education programs. While there is already enough evidence to link rising obesity rates with decreases in time spent on physical education and leisure time physical activity, definitively linking these problems to specific physical education programs executed by schools could provide politicians and policymakers the firepower needed to enact federal physical education legislation.

Recently deceased Senator Ted Kennedy of Massachusetts was a strong advocate for improved education performance. He worked hard to help George Bush push through

his NCLB bill and in 2004 sought to improve physical education through S. 2894, a comprehensive bill that would attack obesity from all sides. The Prevention of Childhood Obesity Act, which in both 2004, and when it was reintroduced in 2005, was relegated to the HELP committee where it failed to progress.

The bill aimed to change the school environment to foster the growth of healthy habits and lifestyles. The initiative would establish a Federal Leadership Commission to Prevent Childhood Obesity for overall childhood obesity prevention; require the Government Accountability Office (GAO) to assess the effects of federal assistance programs and policies on obesity prevention; reduce negative health marketing to kids in advertisement outlets and in schools; require the Secretary of HHS to partner with the CDC to award competitive grants to states and schools for physical education and nutrition programs geared towards obesity prevention and to disseminate evidence-based childhood obesity prevention information, and grants awarded for curricula changes focused on home visitation and afterschool obesity prevention programs, and to establish and encourage healthy and physical activity programs in schools; requires the Secretary of HHS, with the Administrator of Health Resources and Services Administration, award grants for early childhood obesity prevention training for professionals; and lastly, the National Institutes of Health (NIH), and the Secretary of HHS, were mandated to support, expand, and intensify research addressing childhood obesity prevention, and promoting physical activity through enhancing the built environment, respectively. In 2005, Kennedy resubmitted the bill keeping almost the entire bill in whole but withdrew the mandate on the Secretary of HHS to support research promoting physical activity through enhancing the built environment.

Similar to Castle's, Kennedy's bill relies a great deal on grants and oversight by the Secretary of HHS. The grants could provide funding to numerous schools so as to help them effectively improve physical education programs. Additionally, important information for the politicians and policymakers will be gathered. And professionals can receive training which will improve physical education efficacy. This legislation would place a large number of new grants and programs on HHS, and while they have the potential for success, it will depend on whether or not the appropriations are large enough to aid a large number of schools, and if the department effectively doles out the grants while keeping schools accountable and checking to make sure they meet the standards set out in the grants.

Additionally, the bill does not require that schools actually have physical education classes, but only provides a way for them to receive additional funding, that is in no way guaranteed. Schools strapped for cash are not likely to apply for these grants as they will not be able to risk implementing a program that they do not receive the grant money to support. Despite the fact that Kennedy was widely held as a "master politician," even he could not pass physical education legislation as the bill failed to break out of the HELP committee both years.⁷ Kennedy has since expired, and the only other cosponsor, Senator Dick Durbin of Illinois, throwing his weight behind the PLAY Every Day Act in 2007, it is unlikely that this bill will see life on the Congressional floor again.

In June and November of 2005, Republican Senator John Cornyn of Texas and Republican Congressman Zach Wamp of Tennessee's 3rd District introduced the same piece of physical education legislation to the Senate, S.1276, and the House,

⁷ "Ted Kennedy: Remembering a Master Politician." Web log post. *Callbuzz*. 26 Aug. 2009. Web. 22 Apr. 2012. <<http://www.callbuzz.com/2009/08/ted-kennedy-remembering-a-master-politician/>>.

H.R.4359.IH, respectively. The bill would amend ESEA of 1965 to include physical education as a subject required to have academic content and achievement standards beginning in the 2006-2007 school year. Additionally, a physical education assessment, beginning in the 2008-2009 school year, would be required at least once throughout the following periods: grades 3 through 6, 6 through 9, and 10 through 12.

This bill was very simple and short, which in some ways, was a drawback. It required states provide physical education classes and test students. However, the data and information of the tests and participation rates of students were not required. By amending ESEA so as to make physical education a core subject, the bill ensures that physical education is taught by certified professionals and that it receives adequate funding, which would greatly increase the probability that the school would implement an effective physical education program. However, it is unclear if the federal government will provide money to schools for the training needed for current teachers to become certified, or if schools will have to find the cash to hire new, certified teachers, presumably at a higher cost than the non-certified teachers. The same can be said about proper physical education facilities such as gymnasiums.

Congress agreed in the Unfunded Mandates Reform Act of 1995, that all mandates, in any bill in which the total cost of regulation totals over \$50 million, will be paid for by the federal government. However, it is unclear whether the federal government will consider this fundable as it is simply instructing schools whom to hire instead of requiring additional training for current teachers. This money would come from discretionary funds, or money from the Department of Education, which, because of the very definition of the word discretionary, is in no way guaranteed. As a result, schools

may have a difficult time complying with the new rule if there are insufficient moneys for the schools to pay for the teachers. A similar question can be asked regarding facilities: if Congress mandates standards set out by the Secretary of Education, will Congress appropriate funds for new facilities?

This bill was reintroduced in 2007 by Congressman Wamp as the Strengthening Physical Education Act of 2007. Wamp added two sections to the bill which called for the Secretary of Education to evaluate, identify, and publish information on the model states and local physical education programs. Additionally, the Secretary was instructed to award competitive grants to states which established or revised physical education standards, especially if they met minimum content and performance standards established by the Secretary, developed assessment tools, or supported the development of physical education programs. However, the grant required a non-federal matching contribution equal to 20% of the grant.

This bill gained some support in the house with 20 cosponsors publicly supporting the bill with the partisan split at 16 Democrats to 4 Republicans, however, it still failed to make it passed the Early Childhood, Elementary, and Secondary Education subcommittee. The grants in the bill make it a stronger program that supports states and local agencies improve physical education. The grants could potentially help cover training costs. Additionally, gathering information and identifying effective states and local programs could help policymakers from the federal and state level in improving standards and better allocating funding. But, again, the concern lies with the support of funding for proper facilities. Wamp, who was the main advocate for the bill, did not run for reelection in 2010, instead seeking, and failing, in his bid for the Tennessee

Governorship. With Wamp out of office, the Strengthening Physical Education Act is not likely to resurface.

In September, then-Senator Barack Obama from Illinois introduced the Back to School: Improving Standards for Nutrition and Physical Education in Schools Act of 2007, S. 2066. Obama's bill is similar to how his administration has tackled the Obesity, focused on raising nutrition standards. The bill also requires all schools receiving any federal funding meet standards for physical activity issued by the Secretary of HHS on the basis of NASPE recommendations. Additionally, a grant for teacher training, awarded by the Secretary of HHS, and for the "support needed, to implement physical education programs that meet the standards..."⁸ The grants would go to schools and "programs for students from populations at high risk for sedentary activity, including racial and ethnic minority populations and low-income populations."⁹ Lastly, the bill ensured that Carol M. White PEP grants met the physical education requirements set out by the Secretary of HHS.

This bill, while simple, is one of the best bills proposed as it provides funding for teacher training, equipment, and the construction of the necessary facilities, while it also mandates improved standards. The standards extrapolated from NASPE's suggestions would most likely include physical assessments, minimum time requirements, and certified physical education teachers instructing classes. Schools may find it difficult to meet the time requirements NASPE wants – 150 and 225 minutes of physical education in elementary schools and middle and high schools. The only addition would be the

⁸ Back to School: Improving Standards for Nutrition and Physical Education in Schools Act of 2007, S. 2066, 110th Cong.

⁹ *Ibid*

collection of data on participation rates and physical fitness assessments for policy decisions. Unfortunately, this bill received little support. Still, while in office President Obama pushed through the nutrition and healthy foods aspect of the bill. Perhaps he, and Michelle, will soon lobby Congress for legislation that will improve standards and efficacy in Physical Education.

Joe Bacca, Democrat representing California's 43rd District, submitted a short bill, Physical Education to Create a Healthier Nation Act, in February of 2010. The bill stated it would "amend the Elementary and Secondary Education Act of 1965 to ensure that schools have physical education programs that meet minimum requirements for physical education."¹⁰ It was resubmitted in January of 2011 by Mr. Baca when it was referred to the Committee on Education and the Workforce.

The bill mandates 150 minutes of physical education per week in elementary schools and 225 minutes per week in middle and high schools, in all schools receiving federal assistance. States and local agencies are required to develop a plan and ensure to ensure that all physical education programs meet those requirements.

This bill is very brief resulting in sections that are left out. Bacca's bill would increase the amount of time students spend in physical education classes. Additionally, there is a system of accountability that would increase the number of schools meeting standards. However, this piece of legislation does not provide support for teacher training, nor is there a provision that requires teachers receive certification in physical education to teach physical education classes. Lastly, schools that do not have physical

¹⁰ Physical Education to Create a Healthier Nation Act H.R. 4557, 111th Congress.

education facilities would be wholly dependent on whether or not Congress appropriates enough funding to ESEA for states to grant a school a significant sum to build a gym.

In March of 2010, Senator Amy Klobuchar of Minnesota, elected into office in 2007, proposed the Healthy Local Policies for School Act (2010), which focused almost exclusively on nutrition. This bill would amend the Richard B. Russell National School Lunch Act to improve the nutrition standards in federally funded school lunches. The proposed legislation also would require local wellness policies which includes physical activity wellness policy. Lastly, the bill would require the “local school wellness policy of the local education agency by ensuring, at a minimum, that the policy -- ...includes goals for nutrition promotion and education, physical education, physical activity[, and other nutrition education standards.]”¹¹

This bill seems almost redundant. The bill attempts to give schools flexibility while setting, and improving upon already existing, physical education and nutrition standards. But the 2004 Child Nutrition and WIC Reauthorization Act of 2004 already requires schools to “establish a local school wellness policy...under the local educational agency that, at a minimum – Includes goals for nutrition education, physical activity and other school-based activities that are designed to promote student wellness...”¹² It is unclear why Klobuchar’s bill would improve physical education, or even have any real effect, given that the physical education provisions are practically redundant. Klobuchar’s bill failed to gain support receiving zero cosponsors and has not been reintroduced since.

Instead, Senator Klobuchar has focused on passing senate resolutions which declare the first week of May which begins on a Monday as “National Physical Education

¹¹ Healthy Local Policies for Schools Act of 2010, S. 3126, 111th Cong.

¹² Child Nutrition and WIC Reauthorization Act of 2004, § 204.

and Sport Week.” Of her 3 such resolutions, two have passed: one in 2009 (S.Res. 133) and one in 2010 (S.Res.515).

In July of 2010, H.R. 5946 was referred to the subcommittee on Healthy Families and Communities, where it never left. Leonard Boswell, Democrat representing Iowa’s 3rd District, tried again exactly one year later, but the P.E. for the 21st Century Act did not receive attention from other Congressman. The legislation calls for the Secretary of Education to award competitive grants to education agencies and charter schools for physical fitness education and curricula in elementary and secondary schools. The grantees would be required to implement a pilot program for at least one year that uses technology as a key component of the curricula, and it creates a partnership with a local business to ensure community support for the program, and it incorporates physical fitness education into multiple areas of the curriculum. The bill limits these grants to one grantee in each state.

This bill is not for physical education reform, but for trying out new programs to view their efficacy. Not only would this bill be difficult to implement due to the technology component, which would be costly, but also in the added complexity of partnering with a local business. With the grants only going to one agency in each state, this bill, which did not receive much support, would do little to change physical education.

Attempts to improve physical education through grant proposals seemingly had failed. And despite the Carol M. White PEP grants, physical education still slid backwards as obesity continued to burst at the seams. Instead, legislators looked to gather information and compare programs to determine effectiveness.

FIT Kids Act

Slightly before Congressman Boswell's P.E. for the 21st Century Act was introduced, the FIT Kids Act passed the house by a voice vote with 113 cosponsors including 20 Republican Senators and Congressmen. The FIT Kids Act was the name of two bills, one submitted in the House, and one in the Senate. In the House, Congressman Kind has led the charge since 2007, when he first introduced the bill. The 2010 version, which passed, was given the code H.R. 1585.IH, which is how this paper will refer to it to distinguish it from the Senate version. Senator Tom Harkin of Iowa took the reins in the Senate as the Chair of the Health, Education, Labor, and Pensions (HELP) Committee; he submitted the Senate versions, which we will refer to as S.634.IS, to differentiate it. Both submitted their versions of the FIT Kids Act bill each Congressional term since 2007 when they first introduced their proposals, and they did it again in 2009 and once more this current year, 2012. The Fit Kids Act, specifically the House version, has received a great amount of support and attention ever since entertainer, author, celebrity, and health and fitness-expert, Richard Simmons, testified before Congress on national television.¹³

H.R. 1585 attempted to change physical education programs by gathering data and information on physical education participation rates. The introduction of the bill states that its purpose is "[t]o increase awareness of physical activity opportunities at school, and for other purposes." The first section after the findings is entitled "Increasing awareness of Physical Activity Opportunities at School." The section explicitly requires schools to collect and disseminate various information regarding physical activity, physical education, and health and nutrition, to parents. By one year after enactment,

¹³ EdLaborDemocrats. "Richard Simmons on Capitol Hill." *YouTube*. YouTube, 24 July 2008. Web. 23 Apr. 2012. <<http://www.youtube.com/watch?v=B3g6s7NTnDE>>.

H.R. 1585 would have amended ESEA to require schools to post, or make information widely available, on healthful eating, physical education, and physical activity. This would have to be done on “its Internet [*ibid*] website,” or through other means such as mailings.¹⁴ This information would have to include why a healthy lifestyle is important, how the school is promoting these healthy lifestyles – including specific information on “school programs and policies regarding nutrition, physical education, and physical activity.”¹⁵ Additionally, the information would need to include how the programs the schools employed compare to, and whether or not they adhere to, “national guidelines adopted by the Centers for Disease Control and Prevention of the Department of Health and Human Services or the State in which the school is located[.]”¹⁶ The Secretary of Education would also be directed to appropriate funds to the National Research Council Study so that it could examine and make recommendations on the effectiveness of various health programs including physical education. Additionally, the Sec. of Ed. would be instructed, given the availability of funding, to conduct a study on physical fitness assessment and participation rates. These provisions would be authorized as funded for the first year after the bill would pass.¹⁷

The next section is called “Dissemination of Best Practices,” which, if distributed to schools across the nation, could help with physical education reform at a local level. Within 180 days of the enactment of FIT Kids, the Sec. of Ed. would “identify and make available to State educational agencies and local educational agencies, best practices on innovative physical education and physical activity policies and programs at the state and

¹⁴ Fitness Integrated with Teaching Kids Act, H.R. 1585, 111th Cong.

¹⁵ *Ibid*

¹⁶ *Ibid*

¹⁷ Fitness Integrated with Teaching Kids Act, S. 576, 112th Cong.

local level...”¹⁸ The information regarding best practices would show how states and local agencies can overcome common challenges in implantation of physical education and physical activity program, “including barriers for meeting national recommendations for physical education and physical activity in schools, as established by the Centers for Disease Control and Prevention of the Department of Health and Human Services...”¹⁹

Lastly, the Sec. of Ed. would also work in collaboration with the Secretary of Agriculture to encourage schools to participate in the HealthierUS School Challenge by providing healthier school lunches to students.²⁰

H.R. 1585 was not meant to outright reform physical education in the way that later bills try to do. Instead, it sought to collect data and information that would lead to the most effective and efficient means for states and schools. This bill does not involve a great deal of government intrusion and is probably the main reason why it successfully passed through the House. The bill relies on data collection as a means to convince policymakers, educators, etc. to support physical education. However, this bill seems much more like it was supposed to be used as a stepping stone for further legislation. NASPE’s website states that the “[p]assage of this bill is a great step toward federal support for daily quality physical education within the reauthorization of the Elementary and Secondary Education Act.”²¹

Senator Harkin’s proposal would amend ESEA so as to require states and local agencies to assess, via publicly available report cards, their school health and physical

¹⁸ Fitness Integrated with Teaching Kids Act, H.R. 1585, 111th Cong.

¹⁹ *Ibid*

²⁰ Fitness Integrated with Teaching Kids Act, S. 576, 112th Cong.

²¹ AAHPERD. NASPE. *House Passes FIT Kids Act*. National Association for Sport and Physical Education. Web. 22 Apr. 2012. <<http://www.aahperd.org/naspe/about/announcements/fit-kids-act-take-action.cfm>>.

education programs in comparison to NASPE and CDC standards, participation rates, age-appropriate curriculum, percentage of certified teachers, and administrators who actively work to improve health standards. Additionally, it would include “the promotion of healthy, active lifestyles by students within ESEA grant programs that support school counseling, smaller learning communities, community learning centers, and parental involvement in their children’s education.”²² State agency funding would now be available for teacher and principal physical education and health training to improve the quality of physical education and health programs in schools.

Lastly, the bill would, similar to its House counterpart, no more than 180 days after the enactment of the act, require the Sec. of Ed. Work with the National Research Council of the National Academy of Sciences to examine physical activity and education incorporation into Head Start childcare settings, elementary, middle, and high schools. The research would also examine “innovative and effective ways to increase physical activity for all students...”²³ The research would also study the effectiveness of programs on the ability of students’ ability to learn and optimize academic performance.

Again, this bill aims at gathering data and information. Twenty-four senators cosponsored the bill, including Republicans Susan Collins (ME), John Ensign (NV), and Roger Wicker (MI). The report cards section seems to indicate that this bill, like the House bill, intends to gather data and information directed at showing that physical education programs are performing poorly so as to provide policymakers with the information needed to justify greater federal intervention.

²² Fitness Integrated with Teaching Kids Act, S. 634, 111th Cong. CRS Summary on Thomas.loc.gov. Web. 4/22/2012.

²³ *Ibid*

Still, it is unclear how effective either of these bills would be. Although the bills, and the information gathered, would raise awareness for the need, and lack of, quality physical education classes, additional federal legislation would probably be needed. Because we know that states do not have the adequate funds to support such programs, the money must come, originally, from the federal government. Nevertheless, the House version passed. With support still left over, this bill would possibly pass if Democrats, who typically favor federal education regulation, retake the House in the 2012 election.

Mandating Physical Education

In August of 2010, Tom Udall, Senator from New Mexico, introduced the Promoting Health as Youth Skills in Classrooms and Life Act. The duplicate was submitted by Marcia Fudge, Democratic Congresswoman from Ohio's 11th District, in the House of Representatives less than two weeks later. These bills were resubmitted again in 2011. In 2010, the bills died while the 2011 House versions has been referred to committee; The Senate version has not been referred to committee. The bill's purpose is to "support and encourage the health and well-being of elementary school and secondary school students by enhancing school physical education and health education" by amending ESEA so as to include physical education as a core subject, and establishing an office under the purview of the Department of Education.

The Office of Safe and Healthy Students in the Department of Education, which the act would create, would assume the responsibilities of the Office of Safe and Drug-Free Schools and expand it to include promoting health, physical education, and the administration, coordination, and recommendation of "policy for improving quality and excellence of programs and activities designed to" bring funding for health programs,

assess and develop health education programs, assist with curricular creation and design, and research in “health, physical activity, and safety promotion, prevention and reduction of risky health behaviors, and positive youth development, and serve as a clearinghouse for research data documenting the connection between student health, safety, and academic performance, attendance and future job success.”²⁴ The office would also submit a biennial report to Congress regarding physical education, health education, and school health programs, and their efficacy, and whether or not teachers, and others, are prepared to provide high quality education and services in these programs.

Additionally, the bill would amend the “Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801(11))...by striking ‘and geography’ and inserting ‘geography, physical education, and health education’.”²⁵ Assessments for physical education would be left to the states.

The bill would provide grants as a means to fund health and physical education programs by adding the section entitled, “Health Education Grant Program.” These grants would be available to education programs, “especially [those located] in rural areas,” by providing funds, resources, or developing curricula that would help these programs provide a healthier and more physical active environment. The Secretary of Education would award the grants. In the last section of the bill, it focused on the Carol M. White PEP Program, which would receive “such sums as may be necessary for fiscal year 2012 and each of the 4 succeeding fiscal years.”²⁶

²⁴ Promoting Health as Youth Skills in Classrooms and Life Act, S. 392, 112th Cong.

²⁵ *Ibid*

²⁶ Promoting Health as Youth Skills in Classrooms and Life Act, H.R. 2816, 112th Cong.

Udall and Fudge's bill would expand the scope of physical education legislation to include all health, not just physical education, encompassing it in an already-existent federal department. The proposed legislation would help increase funding, accountability, and minimum time requirements. The grants would provide schools with some funds, although, the grant amount would probably be small, as we can see with the PEP Grants. But, because physical education would now be a "core" subject, every physical education teacher would need to be certified by the state in order to pass quality standards given to "core subjects" and, more importantly, schools could use Title I and Title II funding on physical education. But, because the Carol M. White PEP Program may receive no appropriations for the 2013 fiscal year, this ensured funding would have been crucial for numerous physical education programs around the country. The allowance for Title I and Title II funding for physical education programs would greatly improve the quality of programs across the nation.

By creating the new office and making physical education a core subject, the federal government could now check with states to make sure that physical education teachers were properly certified, leading to more effective physical education programs. Additionally, by establishing this office, it would enable Congress to more easily pass legislation that would grant the office greater responsibilities in its physical education mandates. The bill would allow states to determine the best way to assess its students, however, if, like NCLB, Congress decided it needed to create a national fitness standards assessment test, the executive infrastructure would already be established and in place to carry it out.

This bill seems like it could save physical education programs as it could provide the adequate funding by making physical education a “core” subject. By making physical education a “core” subject, the majority of federally provided funding, as mandated in Title I and Title II, could be used by schools for physical education programs. While the Senate bill has two Democratic sponsors, Fudge’s version, which is in committee, has failed to garner a single cosponsor. Unfortunately, it seems that this bill will not pass through Congress.

As we can see, there have been numerous efforts by many different federal politicians to try and improve physical education through federal legislation. Proposals originally tried to create more funding through physical education grants, however, in the late 2000s, this changed. Some new legislation tried to mandate physical education by time requirement. Others tried to make it a core requirement to ensure that teachers were properly qualified, which would improve teacher quality and program effectiveness. More importantly, making physical education a “core” requirement would allow schools to use Title I and Title II funding, which makes up the majority of federal funding to schools, for physical education programs. Other bills tried to use the Secretary of Education as a means to assess, disseminate information, and provide support for physical education programs.

Still, only the FIT Kids Act passed through one chamber of Congress. No bill reached the President’s desk. Although no bill was a “perfect bill,” many of the bills would have provided a much needed supporting foundation to keep physical education programs from collapsing, and leading to systematic improvement throughout the nation. Other bills would have provided schools with the ability to use Title I and Title II funding

for physical education programs, greatly increasing the chances that these programs would be effective. FIT Kids Act was a non-intrusive bill that would have allowed policy makers to better understand why physical education was failing. Additionally, it would have forced states and local officials to take charge of their own programs, without mandating them to adhere to a national standard. It leaves many to wonder, why did it fail to pass?

6. The Politics of Physical Education Legislation – Why did the FIT Kids Act Fail to Pass?

Given that, with the exception of one bill, all physical education legislation has died in subcommittee or committee, whichever it was referred to, it is important to understand why FIT Kids Act succeeded in passing in the House and why it failed in the Senate. Numerous individuals, organizations, and corporations had publicly endorsed, and continue to endorse, the FIT Kids Act. The question remains: if every important cog in the wheel worked together to pass the bill, and it still failed, will physical education legislation and regulation ever pass through Congress?

Although it is difficult to find concrete evidence pointing directly to why the FIT Kids Act did not pass, there was a large effort made by the advocates. Many groups and individuals from both inside Washington and outside poured in their support via money, public statements, and awareness campaigns. But the political stances of Republicans and Democrats in Congress, who dislike federal regulations and standards, proved to be too strong to move past the Senate. If advocates want to pass such legislation in the future, it is important to understand why the most recent attempt failed.

It is generally understood that bills that increase federal regulation of, funding to, and accountability of, schools, are much more likely to garner support from Democratic Party members than Republican Party members. Democrats often want to create standards and ensure that those standards are met. By creating these standards, states and schools will be able to construct their programs so as to reach the goals and benchmarks

set out by the policymakers. Democrats often argue, as was the case with physical education, that States left to their own device will not ensure that issues of national importance, which may not be as highly valued at the local level, make the grade on a national or international comparison. As a result, Democrats often argue that the federal government should aid, support, and mandate education regardless of the fact that the Constitution leaves the responsibility to the states.

On the other side of the political spectrum, Republicans tend to favor a small federal government, believing that a large bureaucracy will slow down the process and lead to great inefficiencies. Additionally, a lack of accountability, which is less common at the local level, and a lack of competition, which is less prevalent in the private sector, often leads to a poorer quality of product. And when it comes to education, Republicans often take this route, arguing that education should be left at the local level, where people on the ground will best determine how they can use their local resources to teach the children. Republicans made a similar argument in this case.

Still, many Republicans supported various education bills, and in this case, physical education, bills. Zach Wamp of Tennessee, Jon Cornyn of Texas, and Michael Castle of Delaware are all Republicans, and all three submitted legislation supporting increased federal involvement in physical education programs. Likewise, not all Democrats sign on to widely supported Democratic education legislation. Six democrats, Mark Dayton (MN), Russ Feingold (WI), Ernest “Fritz” Hollings (SC), Patrick Leahy (VT), Ben Nelson (NE), and Paul Wellstone (MN) voted against NCLB despite the

strong support from Democrats.¹ Numerous others co-sponsored bills and submitted resolutions recognizing the importance of physical education and maintaining healthy lifestyles. Therefore, bipartisan support for physical education legislation should be possible.

FIT Kids Act successfully passed through the House of Representatives but was never brought to a vote in the Senate. Given that the chair of the HELP Committee, the committee to which the bill was referred, was, and still is, Democrat Tom Harkin, the Senator from Iowa must have known that the bill was not going to pass the Senate. Otherwise, it seems only logical that a man who has pushed for physical education reform would bring this to a committee vote and present it to the floor. Interest groups, individuals, and outsiders supported the enactment of the bill. No public records show Because of the way the Senate works, because each bill needs sixty votes for cloture in order to vote on the bill, the large majority of Democrats, and the few Republicans who supported the bill, were unable to bring together enough bipartisan support to land the bill on the President's desk.

Richard Simmons

Richard Simmons, fitness guru, author, and entertainer, famous for his successful line of aerobics videos, has been the biggest celebrity and individual to crusade for increased physical education. He has worked tirelessly since at least 2008 to raise awareness for the need for legislation such as FIT Kids Act and has become one of the fiercest advocates for the bill. Simmons has toured the nation appearing on television

¹ United States. Senate. Legislation and Records. *U.S. Senate Roll Call Votes 107th Congress - 1st Session Measure H.R. 1 (No Child Left Behind Act of 2001)*. Web. 22 Apr. 2012. <http://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=107&session=1&vote=00371#name>.

shows, political talk shows, news shows, radio shows, given interviews, and set-up a website dedicated specifically to the FIT Kids Act.

In 2010, after the bill passed unanimously in the House, Representatives Kind and George Miller, Chairman of the house Education and Labor Committee, brought Simmons back to the capitol for the press conference. Simmons exclaimed:

I've been teaching at schools all around the United States. I bring in their music for the kids. And they dance and they sweat and they stretch and they do cardio and strength training. Because every child in the United States needs to do those three things just like every adult. But sadly enough, are kids are very inactive. Sadly enough, our kids are not eating right. They are depressed, and they are not looking at a bright future. But I do believe, once we have now, and we passed this in Congress...and everyone voted for it – it was unanimous! And now we're going to tackle the Senate. And I'm going to meet with the Senators and I'm going to talk with them and I'm going to go back on television and I'm going to let everyone know, that this is just the beginning of this bill. It's not going to happen overnight. There's not going to be PE in every school overnight. But once we get the Senate on our side, once we get the President to sign this bill...it's still just the beginning. We have to make aware to our Parents of these children that they can't wait. They must become physically active with their children: taking walks, going to a gym, putting a DVD on in the den or the living room. The parents and kids that sweat together, live longer together. So this is just the beginning of our road....I want [the young people of today] to live. I want them to be positive. I want them to be physically active. I want them to eat healthy. And I want them to grow up feeling good about themselves. Because without a high self esteem, we have nothing in this earth.²

Simmons efforts were futile as the Senate did not pass the bill. However, shortly after the press conference, Simmons appeared on Fox News' Your World with Neil Cavuto. The Fox host surprised Simmons when he told him that "from your last appearance here,

² RepRonKind. "CNN.com - Rep. Kind and Richard Simmons Fight for PE in Schools." *YouTube*. YouTube, 22 Apr. 2010. Web. 23 Apr. 2012. <<http://www.youtube.com/watch?v=rMA0zU87TPk>>.

[when Simmons was on Cavuto's show to promote and raise awareness for the FIT Kids Act,] we got 1500 e-mails just from your appearance. That is very good!"³

Simmons' campaign was very successful in mobilizing the population to write and call their representatives to pressure them to support the FIT Kids Act.

Representative Kind, in his closing remarks on the House Floor, just moments before the FIT Kids Act's unanimous voice vote, after naming a list of organizations and people that he wanted to thank for their support, made sure to give a special thanks to Richard Simmons for all of his work: "And not least of which, Richard Simmons, who's been a tireless advocate promoting FIT Kids across the nation, testifying before Congress, appearing before press conferences, on Jay Leno, on David Letterman, and visiting hundreds of hundreds of schools every year, for his life mission of promoting healthy living habits, not just for adults, but especially the children in our lives. I thank Richard Simmons for his leadership and his tireless advocacy in FIT Kids."⁴

Interest Groups

Health and Physical Education organizations also publicly supported the legislation. In addition to thanking Richard Simmons, Congressman Kind also listed numerous organizations and individuals for their advocacy:

I want to thank the over 50 organizations that have endorsed this legislation such as the American Heart Association, the NFL Players Association with their Play 60 Campaign, the National Association for Sport and Physical Education, American Diabetes Association, Sporting Goods Manufacturing Association, the First Lady Michele Obama along

³ "'Fit Kids Act' Passes House Vote." *Fox News*. Fox News Network, 30 Apr. 2011. Web. 23 Apr. 2012. <<http://video.foxnews.com/v/4162478/fit-kids-act-passes-house-vote/>>

⁴ RepRonKind. "FIT Kids 4.22.10." *YouTube*. YouTube, 14 May 2010. Web. 23 Apr. 2012. <http://www.youtube.com/watch?v=6MrVC_Xq9b8>.

with the President that's elevated the calls of children health to new levels and new attention in this country.⁵ Among the numerous organizations, the largest of which were NASPE, AAHPERD, American Medical Association (AMA), American Heart Association (AHA), National Education Association (NEA), the Grocery Manufacturers Association (GMA), and fitness industry leaders from the International Health, Racquet & Sportsclub Association (IHRSA).

NASPE, AAHPERD, AMA, and AHA, all created webpages with information on the FIT Kids Act, and also provided a way for citizens to write to their representatives in Congress. All of them also submitted public statements and position papers explaining their support for the FIT Kids Act. For NASPE and AAHPERD, their mission is to expand physical education in the United States. NASPE's website states that its mission "is to enhance knowledge, improve professional practice, and increase support for high quality physical education, sport and physical activity programs...NASPE envisions a society in which all individuals are physically educated and participate in lifelong physical activity."⁶ AAHPERD's mission similarly states that it "is to promote and support leadership, research, education, and best practices in the professions that support creative, healthy, and active lifestyles," as approved by the Alliance Assembly in April of 2006.⁷ However, for the AMA and AHA, they supported the FIT Kids Act's attempts to improve physical education because of the health benefits those organizations sought to achieve.

⁵ *Ibid*

⁶ "Mission and Strategic Plan." *Mission and Strategic Plan*. American Alliance for Health, Physical Education, Recreation and Dance. Web. 23 Apr. 2012.
<<http://www.aahperd.org/naspe/about/mission.cfm>>.

⁷ *Ibid*

The NEA is an extremely large and important education interest group. In fact, the NEA is the nation's largest, and thus most powerful, union. Their approval and support for education legislation is practically a necessity for many politicians. Therefore, when they supported the FIT Kids Act in March of 2009, the bill received a big boost. The NEA wrote a "Letter to Representatives [Ron] Kind, [Rush] Holt, [Jay] Inslee, [Zach] Wamp, and Susan Davis Thanking them for Introducing the FIT Kids Act."⁸ The letter stated that the association supported The FIT Kids Act because it would help address the problem that schools cutting back on physical education results in fewer children learning about healthy lifestyles, and fewer are physically active during the school day "by promoting physical education and activity in school programs, and supporting professional development for faculty and staff to promote children's healthy lifestyles and physical activity...[W]e look forward to working with you on these very important issues."⁹

Additionally, leaders from the fitness industry, the International Health, Racquet & Sportsclub Association (IHRSA), and the Grocery Manufacturer's Association (GMA), all issued public statements of support and urged Congress to pass this bill.¹⁰ For both the Fitness Industry and the IHRSA, companies could gain a great amount in sales and potential customers if physical education increased in prevalence and improved in

⁸ Diane Shust, and Randall Moody. "Letter to Representatives Kind, Holt, Inslee, Wamp, and Susan Davis Thanking Them for Introducing the FIT Kids Act." Letter to Representatives Kind, Holt, Inslee, Wamp, and Susan Davis. 20 Mar. 2009. *National Education Association*. Web. 22 Apr. 2012. <<http://www.nea.org/home/31161.htm>>.

⁹ *Ibid.*

¹⁰ "Fitness Industry Urges Congress to Support Primary Prevention in Push for a Healthier, More Prosperous America." *Press Release Distribution*. PRWeb: Online Visibility from Vocus, 4 May 2011. Web. 23 Apr. 2012. <<http://www.prweb.com/releases/IHRSA/LegislativeSummit/prweb8377909.htm>>. [and](#) "The Workforce Health Improvement Plan Act (WHIP/S. 1644)." *IHRSA*. 16 Apr. 2012. Web. 23 Apr. 2012. <<http://www.ihrsa.org/media-center/2012/4/16/fitness-industry-to-urge-congress-to-support-primary-prevent.html>>.

quality. Schools would need more fitness equipment, which they would purchase from companies in the fitness industry. The more physically active the population, the greater chance that the number of people playing racquet sports increased, thus increasing the demand for racquets, courts, etc.

But the GMA's support hinges more on preventing additional regulation. The Obama administration struck deals with food providers and manufacturers in an attempt to reduce the number of calories, and increase the nutritional content, in these foods, however, if the focus shifts towards physical education and activity, the fewer calls for increased regulation on the food market there will be. Additionally, if these laws, which call for significantly less regulation compared to what others seek, are successful, than the more likely that similarly less-stringent regulatory policies will be placed, in the future, on the food industry.

GMA President and CEO Pamela G. Bailey issued a statement on FIT Kids Act that first stressed the importance for information and gaining the understanding to use that information to make healthy life choices: "By providing consumers with the products, tools and information they need to construct a healthy diet and lead a more active lifestyle, America's food and beverage companies are committed to playing a leadership role to reverse the trend of childhood obesity within a generation."¹¹ She continued by emphasizing the importance of physical education and physical activity in combatting health problems stemming from physical inactivity and physical education: "Schools are a vital component in this effort...Eating a balanced diet and getting plenty

¹¹ Grocery Manufacturers Association. Newsroom. *Grocery Manufacturers Association Applauds FIT Kids Act. GMA: Representing the Makers of the World's Favorite Food, Beverage and Consumer Products*. 15 Mar. 2011. Web. 23 Apr. 2012. <<http://www.gmaonline.org/news-events/newsroom/grocery-manufacturers-association-applauds-fit-kids-act/>>.

of exercise is the key to achieving and maintaining a healthy lifestyle. It's vital that America's school children are all afforded the opportunity to learn this critical life lesson. To help meet this important goal, we strongly encourage more members of Congress to get on board by cosponsoring the FIT Kids Act."¹² GMA wanted to stress personal responsibility, an idea that most Republicans tend to support, in forming healthy habits for a healthy life. It seems that the GMA decided to support the FIT Kids Act in the hopes that it would prevent further regulation on the food industry.

Other organizations part of the coalition that worked to enact FIT Kids Act includes the NFL and their Play 60 program, the Robert Wood Johnson Foundation, and the American College of Sports Medicine, the YMCA, the American School Health Association, the Campaign to End Obesity, the National Coalition for Promoting Physical Activity, Society of State Directors of Health, physical education and Recreation, Safe Routes to School National Partnership, and many others.¹³ All of these organizations came together in an attempt to improve physical education. Some of these groups lobbied Congressmen with campaign contributions, like the NFL and the YMCA.

Following the Money

And usually, "following the money," or the campaign contributions associated with lobbyists, interest groups, and interested persons, is a good way to determine whether or not a bill will fail or pass. The more money one side has over the other, the

¹² *Ibid*

¹³ Congressman Ron Kind. *Reps. Kind, Wamp, Inslee, Sen. Harkin Reintroduce FIT Kids Act, Calling for More P.E. in Schools*. Congressman Ron Kind. 19 Mar. 2009. Web. 23 Apr. 2012. <<http://kind.house.gov/index.cfm?sectionid=52&parentid=1&iontree=&itemid=276>>. and "Advocacy Coalitions." *National Association for Sport and Physical Education*. American Alliance for Health, Physical Education, Recreation and Dance. Web. 23 Apr. 2012. <<http://www.aahperd.org/naspe/advocacy/governmentRelations/Advcoalitions.cfm>>.

higher the stakes for the one side. However, in the case of FIT Kids Act, MapLight, “a nonprofit, nonpartisan research organization that reveals money’s influence on politics,” found that “0 organizations supported and 0 opposed.”¹⁴ Upon examining MapLight’s information on the new Senate and House versions of the bills, the footnote at the bottom of the page explains that the information for the Senate bill as “Include[ing] reported contributions to congressional campaigns of Senators in office during the 112th U.S. Congress from interest groups invested in the vote according to MapLight, July 1, 2005 – June 30, 2011.”¹⁵ The House bill’s footnote is similar but the date range is smaller stretching from July 1, 2009 – June 30, 2011.¹⁶ According to MapLight’s records for the separate House and Senate bills, interest group contributions totaled \$4,860,326 in the Senate, from July 1, 2005 to June, 30 2011, and \$2,653,205 to Congressmen in the House from July 1, 2009 to June 30, 2011.

Examining campaign contributions during H.R. 1585’s life in the House and Senate will give a more accurate representation of the amount of money contributed for the purpose of passing the House version. In the House, this timeframe spans from March 18, 2009 until the death of the bill at the end of the calendar year. Because campaign contributions are not typically donated at one time, but usually spaced out to encourage continuing support for a cause, it makes sense to account for the campaign contributions to both representatives in the Senate and the House over the entire life of the bill. The

¹⁴ "H.R. 1585 - FIT Kids Act." *MapLight: Revealing Money's Influence on Politics*. MapLight. Web. 23 Apr. 2012. <<http://maplight.org/us-congress/bill/111-hr-1585/432898/total-contributions>>. and "About MapLight." *MapLight: Revealing Money's Influence on Politics*. MapLight. Web. 23 Apr. 2012. <<http://maplight.org/about>>.

¹⁵ "S. 576 - FIT Kids Act." *MapLight: Revealing Money's Influence on Politics*. MapLight. Web. 23 Apr. 2012. <<http://maplight.org/us-congress/bill/112-s-576/900959/total-contributions>>.

¹⁶ "H.R. 1057 - FIT Kids Act." *MapLight: Revealing Money's Influence on Politics*. MapLight. Web. 23 Apr. 2012. <<http://maplight.org/us-congress/bill/112-hr-1057/900834/total-contributions>>.

timeline feature of MapLight reveals that in the House, interest groups donated \$1,979,812 during this period.¹⁷

MapLight does not include contributions to Senators in H.R. 1585's data, and instead lumps all contributions for Senators to the Senate version. It seems much more realistic that the contributions to Senators reflect attempts to influence Senators to pass the House version. In order to determine the amount interest groups contributed to Senators is by counting all donations when the bill was referred in Senate on April 22, 2010, until the end of the term. In this case, interest groups donated \$605,411 to Senators out of a total \$4,860,326.¹⁸

However, from March of 2009 until September of 2010, campaign contributions to Senators from interest groups advocating the support of FIT Kids Act was markedly greater for each two month period. Previous years saw cycles of 8-month periods in which contributions would steadily rise and fall between roughly \$30,000 and \$100,000. By March of 2009, when the bill was first introduced in the House, the amounts increased: almost every two month period was over \$100,000 in contributions. Therefore, it is reasonable to assume that at least some of these contributions were attempts to influence politicians to pass H.R. 1585. Counting the amount contributed from March of 2009, brings it to \$1,033,456 in campaign contributions to Senators supporting the passing of the legislation.¹⁹ Using this methodology, the total contributions to Congressmen comes to \$3,013,268 advocating the passage of the bill.

¹⁷ *Ibid*

¹⁸ "S. 576 - FIT Kids Act." *MapLight: Revealing Money's Influence on Politics*.

¹⁹ *Ibid*

MapLights cited 7 organizations in five sectors contributing to the campaign contributions. Food and Kindred products manufacturing led the way with the GMA as the organization that took the helm in both the House and the Senate contributing a large bulk of money. The Professional Sports, Arenas, & Related equipment & Services, which includes the NFL, was second on the list in campaign contributions. In the House, the YMCA and other Amusement/Recreation Centers gave the third most amount while as in the Senate, these groups were fourth. Health & Welfare Policy organizations such as AAHPERD, ADA, and AHA contributed the fourth most amount in the House and the third most in the Senate. The sector that gave the least was the Sporting Goods Sales & Manufacturing, led by the Sporting Goods Manufacturers Association. Lastly, private donors also sent in money to politicians, all to support the bill. When the campaign contributions are all counted, no money was given to opponents from private donors, organizations, companies, or any other interest group. Then the reasons that the bill did not pass must be attributed to the individual politicians and their stances on physical education.

The House v. The Senate

Although the bill did not pass in the Senate, it did in the House, and with bipartisan support. Although Democrats tend to support FIT Kids Act in much larger numbers, both sides of the aisle have strong reasons for supporting the legislation. Democrats believe that the costs of obesity and physical inactivity create a need for the federal government to step in to improve the general welfare of the nation. Additionally, support from the federal government can help states do what they actually want to do so

that states such as New York and South Carolina, that want to improve physical education and reduce obesity rates, can do so with the aid of the federal government.

Representative Jay Inslee of Washington stated that “A University of Washington study showed that nearly a quarter of the Evergreen State’s eight-, 10th- and 12th-graders are overweight or obese...We can and must do better for our kids...we need to include provisions to ensure every child has a fair chance at health, just like the law now aims to give all children a fair chance at learning.”²⁰ Cardiologist Robert DiBianco, who works at Washington Advent Hospital and also spokesperson for the American Heart Association agreed with Inslee, “[w]ith the alarming increase of childhood obesity in our nation, physical education needs to be a priority in all schools. With the challenge we face in reversing this national health crisis is a shared responsibility, Congress has the power to take immediate action with the FIT Kids Act.”²¹ And this was the stance that Democrats especially took up in supporting the bill. However, a source familiar with the office of Representative Kind emphasized that ensuring kids are fit and healthy is not a partisan issue and a stance that both Democrats and Republicans fully support. Politicians on both sides of the aisle are very concerned whether or not kids are getting enough activity.

Additionally, as was the original impetus for Eisenhower’s probing deeper into the state of America’s youth fitness levels after the Krauss-Weber study, many politicians, especially Republicans, hold a concern over whether or not our children today are fit enough to serve in the armed forces tomorrow. As the front page of *Mission:Readiness*’s, a “national security nonprofit organization led by over 300 retired

²⁰ Senator Tom Harkin. Press. *Sen. Harkin, Reps. Kind, Wamp, Inslee Reintroduce FIT Kids Act, Calling for More P.E. in Schools. Tom Harkin: Iowa's Senator*. 19 Mar. 2009. Web. 23 Apr. 2012. <<http://harkin.senate.gov/press/release.cfm?i=310064>>.

²¹ *Ibid*

generals, admirals, and other senior military leaders who work to ensure continued American security and prosperity by calling for smart investments in the upcoming generation of American children,” website states, “[c]urrently, 75 percent of 17- to 24-year olds in the US cannot serve in the military, primarily because they are physically unfit, have not graduated from high school, or have a criminal record.”²² A source familiar with the FIT Kids Act revealed that this threat to national security was, in fact, an influencing factor that helped push the bill to receive unanimous support in the House’s voice vote.

Then why did the bill fail in the Senate? While it is difficult to know, and even more difficult to find definitive answers, there are many reasons that contribute to it. Some of it is due to the fact that the legislation may not have been at the forefront of the Senate’s schedule. One policy expert and another source familiar with the bill supported the idea that legislation tends to be examined on a cyclical basis. It is possible that FIT Kids Act’s cycle had passed in the Senate, although there is not much evidence to show for this.

It is possible that Senate Democrats were waiting on the word from President Obama and his wife to determine whether or not to push the bill forward. In late 2009 until the end of 2010, Congress was busy with major legislation. Bills such as the National Defense Authorization Act for Fiscal Year 2010, The Consolidated Appropriations Act, 2010, the Unemployment Compensation Act of 2009, the Hiring Incentives to Restore Employment Act of 2010, the Patient Protection and Affordable Care Act, Health Care and Education Reconciliation Act of 2010, Dodd-Frank Wall

²² "Mission: Readiness." *Mission: Readiness: Military Leaders for Kids*. Mission: Readiness. Web. 23 Apr. 2012. <<http://www.missionreadiness.org/>>.

Street Reform and Consumer Protection Act, Healthy, Hunger-Free Kids Act of 2010, Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, and Don't Ask, Don't Tell Repeal Act of 2010, to name a few. Therefore, FIT Kids Act may not have been a top priority.

When Simmons was on Cavuto's Fox show, the host asked the celebrity if Richard had spoken to Michelle Obama. Simmons explained that the Obama administration had not reached out to Simmons. There is nothing in the public record to show that Michelle Obama or the Obama administration was behind the FIT Kids Act, but it does not mean that they did not support it. Given that the President's efforts were held up by the numerous pieces of legislation above, and the First Lady's focus was honed in on the Healthy, Hunger-Free Kids Act of 2010, as well as programs and initiatives like "Chefs Move to School," it is very likely that Democrats did not push the bill in the Senate because they simply ran out of time. An official from Representative Kind's office said that, "unfortunately every year there is good legislation that does not get brought up. Sometimes the calendar gets full." Perhaps this was the case with FIT Kids Act.

Personal Responsibility and Local Control

But some of it also comes down to the Republican shift in stance over the last five years after the problems with NCLB surfaced combined with the idea of personal responsibility mentioned earlier. Republicans do not want federal standards in education and prefer a subject such as physical education to be the responsibility of the family and individual, not the state. As one public health expert stated, many politicians argue that

regulating and creating national standards for physical education is just one step closer to a nanny state.

Representative Kind, responding to a Congressman from Utah, spoke on the House floor shortly before FIT Kids Act passed in the chamber. Although Representative Kind is a member of the Democratic Party and a strong advocate for increased support for physical education, he recognized the importance, whether for political purposes or due to his own opinion, for physical education and physical activity to be left primarily to the individual, and thus, the government's role should be limited:

And in response to my good friend from Utah, I know his belief is sincere, but just to be clear what this legislation is before us, we are not mandating that schools and school districts have to offer physical education, merely informing parents and the community what physical activity and physical education courses are being provided today, and we are very careful in that...Ultimately, and I would agree with my friend from Utah, it really does come down to personal responsibility, for us to take more personal control over our own healthy lifestyle decisions.²³

When Representative Kind mentions personal responsibility, he is referring to the phrase, which Republicans like to use, that puts the onus on the individual. Decisions that would determine whether or not someone leads a healthy lifestyle should be left to that individual to choose. If they want to eat unhealthy foods and remain inactive, it is their choice. They will pay, and suffer, the consequences, but this is still their right to pick. Coercion from the government is an intrusion on people's rights that should not be practiced. So in this case, Kind was agreeing that although Kind advocates for physical education, only the individual can decide whether or not they will be consistently physically active for the recommended periods of time.

²³ RepRonKind. "FIT Kids 4.22.10." *YouTube*.

Physical education is important, but is not viewed in the same light as math, science, or language arts. But can you blame politicians for feeling this way? Many probably remember physical education as dodgeball, baseball, and a lot of standing around – bullying and inactivity, which are detrimental to child growth. There has been little research to show that current physical education programs are working. Additionally, any increase in regulation will necessitate funding, for a program which will not get better in the near-future. Such long-term projects rarely receive the support needed to pass.

Despite the backing of private organizations, politicians, and celebrities, FIT Kids Act did not pass. Even with no money from outside groups opposing the bill and a significant amount donated in attempts to convince politicians to support the bill, it never made it out of the Senate. With Republicans taking over the House and looking to slash the budget, the Obama administration and physical education advocates will have no chance to pass such legislation. The only hope is that Democrats can retake both chambers of Congress in the 2012 election – which is highly unlikely to happen according to experts – and reach a bipartisan agreement that will hold for years. When this will happen: who knows? We can only hope that in the meantime, the efforts of individuals, families, and schools, private organizations, nonprofits, and state and federal programs will be enough to begin the turn-around in creating a country of healthy people. A concerted, focused, and unified effort by interest groups, the President's administration, and individual politicians who support the bill could very well result in the enactment of such a bill. But right now, the chances, unlike our nation, look slim.

Conclusion

Physical Education, and the resulting habits of consistent physical activity, has incredible benefits. When children are physically active and develop the habit of being physically active, they learn more, and quicker. Physically active people are healthier and are less likely to develop chronic illnesses. Additionally, inactive people are a burden to the workforce, missing time due to greater occurrences of illnesses, and are less productive. Such costs affect individuals, companies, and society as a whole.

Yet despite this clear evidence for the need for physical education, physical education is treated and thought of as a secondary subject. It does not receive the same treatment, respect, attention, priority, and most importantly, funding, as math, science, and the language arts. Some view physical activity, and the teaching of healthy habits, as merely an issue of personal responsibility bearing no place in education. We see this attitude prevail in the way that schools and states are quick to cut physical education and activity programs and funding, despite the, often unknowing, negative consequences of doing so. We also see it in the way that politicians speak of physical education. But if we are going to put a heavy focus on math, science, and language arts, then we must also focus on physical education. As Representative Kind says, “This bill gets to the simple truth: in order to develop healthy minds, you need healthy bodies.”¹ And across large populations, without the body, it is difficult to develop the mind. If our society does not have strong minds, we cannot reasonably expect American people to successfully compete in this global economy.

¹ Senator Tom Harkin. Press. *Sen. Harkin, Reps. Kind, Wamp, Inslee Reintroduce FIT Kids Act, Calling for More P.E. in Schools. Tom Harkin: Iowa's Senator.*

There is also a side to physical activity that seems to be ignored, and that is rarely brought into the political debate. Physical education and physical activity go beyond the classroom, past the workplace, and outside of our doctor's office. A community that is physically active is a safer community that fosters growth in every positive sense: economically, academically, and support. But this kind of growth does not result mainly from individual responsibility. Instead, it is determined by policies, which provide the environment and opportunities that individuals can take advantage of. By providing incentives, tools, and opportunities, communities improve the chance that individuals will be able to take individual responsibility for their activity and health. Now that they are equipped with the understanding of why it is important, the knowledge for, and the ability to be physically active, individuals can, and are much more likely to do so.²

So if we strive and want to live in communities in which we are safer, wealthier, healthier, and wiser, then we should pressure our government and politicians to enact legislation supporting the development of such environments. And improving and maintaining physical education, like building sidewalks and safe bike pathways on roads, providing public athletic facilities, incentivizing preventative health check-ups, and many other health policies, is just one piece of the puzzle that could help bring us closer to such a community.

But it is unclear how strong the movement is to build such communities from federal government intervention, regulation, and support. Many at the federal level have turned to states to provide the traditional structure and direction in education policy. And even states realize and understand that they must take an active role in ensuring that

² M.G. Marmot and Richard G. Wilkinson. *Social Determinants of Health*. Oxford: Oxford UP, 2006. Print.

students are staying physically active and developing proper habits. This is why New York and South Carolina have passed laws mandating minimum physical education requirements. It is not that states do not want their children to be physically inactive or unhealthy, or that they do not care for their children. In most cases, the public sentiment, at least among politicians, is not strong enough to support the added revenues needed to pay for physical education programs. Coupled with the pressures from NCLB, most states do not want to risk taking funding and time away from these core-subject classes for physical education. It is obvious that states have not been adequately informed about the academic benefits resulting from physical activity and physical education. There is a basic understanding that staying physically active improves health, but states have not yet made the link with physical activity and academic performance. Given that such long-standing research seems to be unknown by states, the newer research that shows the link between communities with greater participation rates in physical activity is almost certainly also largely ignored.

States have failed to maintain and improve physical education, even when they try to do something, as was evident with New York and South Carolina. Thus, we need a push from the federal government. While it does not mean that the federal government should take over physical education, it means that states and the federal government should work together. If there is an effective way to teach physical education that produces results, then the federal government can work together with the state governments to determine what is the best avenue for funding, accountability, and information dissemination to states, schools, and parents.

Right now, even legislation like FIT Kids Act, which would only provide states and schools with information on best practices and collect information, would bring greater awareness and some additional community support that could lead to greater physical education improvements. The more support that the federal government provides to states, without a great deal of regulation, the more likely states will be to implement physical education programs, especially ones that mandate students participate in programs for longer periods of time. There are numerous physical education programs that can be more effective than what is currently taught today, but these programs will never be implemented if the states are left to their own devices.

In order to introduce change to Physical Education, the physical education advocacy movement must be unified. The Obama Administration, celebrities like Richard Simmons, and the interest groups, must all coordinate a plan of attack. Interest groups waste money they could later donate and use for leverage, and great amounts of momentum from the energy built up from small successes such as H.R. 1585's passing in the House, can be lost and difficult to regain. But most importantly, the differences in the physical education advocacy community must be settled prior to this campaign.

States, in their lack of monitoring schools, let physical education become unfocused. Is the purpose of physical education to produce healthy students who will continue with healthy habits in their healthy lifestyles after they move on from school, or is it something else? How much of sports, recreation, and dance, and the corresponding skills, should physical education classes focus on? In an e-mail from SPARK PE, a research-based organization that designs health curriculum for schools and programs, Marketing Manager Billy Beltz, Professor Emeritus Thomas McKenzie of San Diego

State University's School of Exercise & Nutritional Sciences wrote that "It...appear[s] that PE does not have a united front. PE is not PE is not PE.....it has a muddled mission, and rarely is there agreement on what its outcomes should be... Even where there are policies, there is very little accountability for them being followed and school programs are rarely evaluated."³ And even if they were evaluated, according to what standards would they be?

Instead, the Physical Education advocates must first unite and define what physical education is based on health- and habitual physical activity-outcomes. Skills, such as achieving competence in a number of sports and sport-like activities should be disregarded and left by the wayside, unless scientifically shown to significantly contribute to a healthy lifestyle after school and under the assumption of a lack of organized sports. Physical education should consistently produce healthy and active children, and adults who are habitually physically active. The fact that physical education currently does not do this, as demonstrated by the almost-ever-increasing obesity rates, combined with the bad memories many associate with physical education, are the impetus for politicians ability to sweep the legislation under the rug citing excessive regulation, lack of funding, and other reasons that should not come between the future of our nation and its health.

But the future of physical education looks bleaker than ever. In March of 2012, *Education Week* reported that "[i]n the Senate's proposed [fiscal year] 2013 budget, the PEP grants would be consolidated into a block grant, according to Beltz, meaning it would be lumped with other legislation, leaving states to pick and choose how they

³ Billy Beltz,, "[PreventObesity.net] Physical Education Politics." Message to the author. 16 Apr. 2012. E-mail.

allocate money to each program.””⁴ However, pressures from NCLB and possible budget cuts make this a dangerous policy for the continuation of physical education. Beltz told *Education Week* that “[a] state could actually choose to put no money toward P.E. and we know that that will happen. If P.E. is combined with all these other subjects, with the pressure that schools have, the money does not go to P.E.””⁵ But the House’s budget is no better as it would completely eliminate PEP funding altogether.

With politicians looking to eliminate the last shred of federal support for physical education, we have to ask what people expect will get children off of the PlayStation and onto the playground? If we sit back and do nothing, then the consequences from the inaction of today will fulfill today’s prediction by health experts for our children’s tomorrow: that for the first time since the mid-1800s, schoolchildren have a lower life expectancy than their parents.⁶

⁴ Bryan Toporek, “Phys. Ed. Advocates Take to Capitol Hill for NASPE Speak Out! Day.” Web log post. *Schooled in Sports*. Education Week, 29 Mar. 2012. Web. 23 Apr. 2012. <http://blogs.edweek.org/edweek/schooled_in_sports/2012/03/phys_ed_advocates_take_to_capitol_hill_for_naspe_speak_out_day.html>.

⁵ *Ibid*

⁶ Olshansky, S. Jay, Douglas J. Passaro, Ronald C. Hershow, Jennifer Layden, Bruce A. Carnes, Jacob Brody, Leonard Hayflick, Robert N. Butler, David B. Allison, and David S. Ludwig. “A Potential Decline in Life Expectancy in the United States in the 21st Century.” *New England Journal of Medicine* 352.11 (2005): 1138-145. *The New England Journal of Medicine*. 17 Mar. 2005. Web. 23 Apr. 2012. <<http://www.nejm.org/doi/full/10.1056/NEJMSr043743#t=article>>.

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